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ABSTRACT

The document presents Bylaw 13.04.01 of Maryland relating to programs for handicapped children. Sections focus on the following topics: commitment, definitions, state responsibility, responsibility of agencies providing direct service, identification, programing, and hearing procedures. A summary of parent involvement in placement procedures includes timelines from the initial screening to implementation of the individualized education program and timelines for the hearing process. The commitment of the bylaw is intended to provide free and appropriate educational programs and related services for all handicapped children from birth through 20 years. (CL)

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BYLAW 13.04.01

PROGRAMS FOR HANDICAPPED CHILDREN

The Maryland State Department of Education
May 19, 1978

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13.04 SPECIAL INSTRUCTIONAL PROGRAMS

13.04.01 Programs for Handicapped Children

(Education Article; Sections 8-401-409, 414, 415, 417)

.01 Commitment

In accordance with the Education Article, Sections 8-401-409, 414 Annotated Code of Maryland, State and local education agencies shall provide free and appropriate educational programs and related services for all handicapped children, from birth through the age of 20, who are found to be in need of special educational services. These appropriate services are to begin as soon as the child can benefit from them, provided services for chiidren under the age of five shall be phased in as required by law.

.02 Definitions

A. "Handicapped Children"

(1) "Handicapped children" means those children who have been determined through appropriate assessment (see Regulation .05C) as having temporary or long-term special educational needs arising from cognitive, emotional, or physical factors, or any combination of these. Their ability to meet general educational objectives is impaired to a degree whereby the services available in the general education program are inadequate in preparing them to achieve their educational potential.

(2) "Handicapped children", as referred to above, includes those children who have been described as follows:

(a) "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without ampli-

fication, which adversely affects educational performance.

(b) "Deaf-blind" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that the children cannot be accommodated in special education programs solely for deaf or blind children.

(c) "Hard of hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance, but which is not included under the definition of "deaf" in this section.

(d) "Mentally retarded" means significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(e) "Multi-handicapped" means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that the children cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

(f) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by

congenital anomaly (for example, clubfoot, absence of some member, etc.), impairments caused by disease (for example, poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (for example, cerebral palsy, amputations, and fractures or burns which cause contractures).

(g) "Other health impaired" means limited strength, vitality, or alertness, due to chronic or acute health problems (such as heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes), which adversely affects a child's educational performance.

(h) "Seriously emotionally disturbed" is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

(aa) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(bb) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(cc) Inappropriate types of behavior or feelings under normal circumstances;

(dd) A general pervasive mood of unhappiness or depression; or

(ee) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes children who are schizophrenic or autistic. The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

(i) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(j) "Speech impaired" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

(k) "Visually handicapped" means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

(3) Handicapped children may be able to function in a general education program full time with the assistance of supplementary services; may require supplementary services outside of the general classroom; or may require more intensive service which necessitates placement outside of the general education program. Some handicapped children require special education and related services; some do not. Economic and cultural disadvantaged conditions are not, in themselves, handicapping conditions which justify special education programming.

B. "Special education" means instruction provided at no cost to the parents, which is specially designed to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. The term also includes vocational education, if it consists of specially designed instruction, to meet the unique needs of a handicapped child, at no cost to the parents. Related services are transportation and those developmental, corrective, and other supportive services that are required to assist a handicapped child in benefiting from education. The term "related services" includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

C. "Special education services" means special education and related services as defined above.

D. "Appropriate special education programs" means those services defined in each child's individualized education program (I.E.P.).

.03 State Responsibility

A. State Advisory Board. The State Superintendent of Schools shall appoint, with the approval of the State Board of Education, a State Advisory Committee for Special Education. This committee shall be composed of the following: individuals involved in or concerned with the education of handicapped children; handicapped individuals; teachers (special and general); parents or guardians of handicapped children; local education officials, including building principals in general education; representatives from the State Departments of Human Resources and Health and Mental Hygiene; and administrators of programs for handicapped children. The State Advisory Committee shall advise the State Superintendent of Schools regarding unmet needs within the State in the education of handicapped children, regulations or bylaws to be promulgated regarding the education of handicapped children, and the development of programs for handicapped children. The term of appointment shall be 3 years.

B. Assurance. The State Department of Education shall assure that all children, birth through age 20, residing in the State who are handicapped, regardless of the severity of their handicap, and who are in need of special education or related services, or both, are identified, assessed, and provided with appropriate special education services as consistent with Maryland Law and Federal Law.

C. Planning.

(1) The State Superintendent of Schools shall require the maintenance of a comprehensive plan for the provision of special educational

services by each local education agency. This plan is to be updated and submitted annually. The plan shall be in accordance with guidelines prescribed by the Maryland State Department of Education and reviewed as set forth in the Education Article, Section 8-406, Annotated Code of Maryland. The State Superintendent of Schools will not approve any plan which, in his judgment, deprives any child of appropriate special educational services.

(2) Modifications of the comprehensive plan submitted by a local board of education for approval shall be reviewed in the same manner as set forth in the Education Article, Section 8-406, Annotated Code of Maryland.

(3) If the State Superintendent of Schools determines for any school year that the plan from a local board of education fails to provide appropriate special education services for any child, he shall, under the provisions of the Education Article, Section 8-406, Annotated Code of Maryland, prepare a modification of this plan. The State Board of Education shall consider the modified plan and hear any appeals relative to the modification. The State Board of Education shall not approve any modification which, in its judgment, deprives any child of appropriate special educational services.

D. Interagency Collaboration. The State Department of Education, in collaboration with other state agencies, shall establish, implement, and maintain state interagency coordination to insure the development of interagency planning and implementation of programs for handicapped children. Generally, this collaborating shall lead to the provision of special education services (as defined in Regulation .02C) by the

Department of Education, medical services, services by the Department of Health and Mental Hygiene, and social services by the Department of Human Resources.

E. Monitoring and Evaluation Activities. The State Superintendent of Schools shall be responsible for the development of policies and procedures for monitoring and evaluation activities which insure compliance of all public agencies within the State with the requirements of these regulations and State and Federal Legislation. These procedures shall also provide for the evaluation of the effectiveness of the individualized education programs.

F. Personnel Certification and Training. The State Superintendent of Schools shall be responsible for the development and implementation of a comprehensive system of personnel development which shall include the inservice training of general and special education instructional personnel, related services personnel, administrators, and support personnel in all programs serving handicapped children. This training shall be made available to both public and nonpublic facilities. Certification requirements shall be as set forth in COMAR 13.06.01.

G. Services Provided by Other Agencies and Organizations. Educational services provided by other than local education agencies, whether public or private, shall be under the supervision of the State Superintendent of Schools who shall insure that these programs meet minimum requirements as set forth in these regulations. Special educational programs offered by nonpublic and State funded or operated institutions shall be approved in accordance with the provisions of the Education Article, Sections 2-206 and 2-303, (h), Annotated Code of Maryland, and "Guidelines for the Approval of Education Programs offered by State Institutions", Maryland State Board of Education, or "Standards for Nonpublic Schools for the

Handicapped" COMAR 13.09.01.02F.

H. Transportation.

(1) The State Board of Education shall establish regulations for the provision of free transportation for all handicapped children. These regulations shall be in accord with the Education Article, Article 66-1/2, and COMAR 13.05.03.01A. Implementation of these regulations shall occur by FY 1981.

(2) Daily transportation or reimbursement shall be provided for attendance at approved nonresidential facilities, and the State Superintendent of Schools shall establish uniform criteria for the frequency of transportation to be provided to residential facilities.

(3) Consistent with Section H(1) and (2) above, transportation shall be provided in accordance with the individualized education program as determined by the Admission, Review, and Dismissal Committee.

I. Facilities. The State Department of Education shall develop minimum criteria for classrooms and facilities for special education programs.

J. Financial Accounting.

(1) The special education financial accounting system shall be in consonance with the State of Maryland's categories of expenditures.

(2) The minimal educational services delineated within the financial accounting system program structure shall be those

contained in "The Financial Reporting Manual: Maryland Public Schools".

(3) State reimbursement shall be based on the provision of special educational services as reported to the State Department of Education in the "Guidelines for Special Education Financial Accounting and Reporting".

K. Reimbursement for Educational Programs of Students Residing in Public Institutions. When the recommendation of the local education agency Admission, Review and Dismissal Committee (ARD) is to place a child in a public residential institution, the following formulas for reimbursement shall apply:

(1) When special education services are provided by a public institution, the State Board of Education shall require the local board of education to pay that institution an amount not to exceed that amount which the sending local board of education appropriates from its own funds on an average per pupil cost basis for all children receiving locally operated Level V service, or the actual cost of the program, whichever is less.

(2) The State Board of Education may require local education agencies to provide special educational services for handicapped children, from birth through age 20, residing in approved public residential institutions within their respective boundaries. Funds for the education of these children shall be provided pursuant to a formula administered by the State Board of

Education whereby the local education agency providing the services is granted 100 percent of the cost of the services for those children whose parent's or guardian's legal residence is in another local subdivision. The local education agency providing the service shall be reimbursed as follows: the cost to the sending local education agency shall provide for each child involved, either the average per pupil cost which the sending local board of education appropriates per child for all children receiving Level V services operated by that local board of education, or the actual cost of the program whichever is less. If the actual program cost exceeds the Level V per pupil cost of the sending local board of education, the State shall reimburse the local board of education providing the service for any remaining approved costs.

.04 Responsibility of Agencies Providing Direct Service.

A. Education agencies providing direct service to handicapped children include local education agencies, nonpublic special education schools and state funded or operated facilities. Except as noted, all references in these regulations apply to all education agencies providing direct service to handicapped children.

B. Local Education Agency Responsibility. All children, from birth through age 20, residing within the jurisdiction of the local educational agency who are handicapped, regardless of the severity of the handicap, and who are in need of special education and related

services shall be identified, assessed, and provided appropriate special education services consistent with the provisions of these regulations.

C. Local Education Agency Planning Responsibilities.

(1) The local education agency shall maintain a comprehensive plan which provides for the identification of children who may be in need of special education services and for the delivery of these services. This plan is to be submitted annually to the State Superintendent of Schools.

(2) This plan shall be in accordance with policy and format established by the Maryland State Department of Education.

(3) If a local board of education determines for any school that the county or the City of Baltimore share of monies, plus the State share, plus any additional aid, is insufficient to carry out the local plan approved under the provisions of the Education Article, Section 8-404, Annotated Code of Maryland, the local board shall prepare a modification of the local plan. This modification shall be submitted to the State Superintendent of Schools within 25 days after the adoption of the local education agency budget for the school year to which the modification applies, providing the modification does not deprive any child of appropriate special education services.

(4) Before development and submission of these plans or modifications, the local education agency shall provide for public hearings, adequate notice of these hearings, and an opportunity for comment by the general public, consistent with the local

education agency's procedure for the adoption of policy.

D. Local Education Agency Responsibility for Interagency Collaboration. Each local education agency in collaboration with local and State agencies and other private and public resources shall establish, implement, and maintain local interagency planning and implementation of programs for handicapped children.

E. Public Information. The education agency shall provide the public with information regarding special education programs and related services consistent with the agency's public information policy.

F. Personnel.

(1) Each education agency shall designate a person to be responsible for administration of the special educational program to ensure implementation of the provisions of these regulations.

(2) Each education agency shall designate a person to be responsible for the coordination and supervision of the special education instructional program. This person shall have the necessary training and background of experiences to perform these duties.

(3) The education agency shall provide certificated education personnel as specified in COMAR 13.06.01, to ensure implementation of the provisions of these regulations. Additional agency personnel criteria shall be in compliance with established policies of the State Board of Education.

(4) All education support personnel shall meet certification requirements as specified in COMAR 13.06.01.

(5) All other personnel, including but not limited to, nurses, physicians, psychiatrists, occupational therapists, physical therapists, and social workers, shall hold all licenses required by the State to practice in the State. Qualifications for these personnel when working in educational programs, as well as guidelines for their supervision, shall be developed jointly by the State Departments of Education and Health and Mental Hygiene.

(6) All aides, paid or volunteer, shall be at all times under the direct supervision of qualified staff. The duties and responsibilities of all aides shall be clearly defined in writing.

G. Facilities.

(1) The education agency shall provide classrooms and facilities for programs and services for handicapped children which are at least equivalent to those provided for students in the general education program and consistent with the minimum criteria as established under Regulation .03I, above.

(2) The education agency shall provide facilities in accordance with "Regulations Governing Construction of Facilities for the Handicapped", Article 78A, Section 51, Annotated Code of Maryland.

H. Assurance of Non-Discrimination/Parents. The education agency may not require parents or guardians of any child placed in special education services to perform duties not required of a parent or guardian of a child in a general school program.

I. Personnel Training. Each direct service agency shall be responsible for the implementation of a personnel development plan which includes the inservice training of general and special education, instructional and related services, administrative, and support personnel.

.05 Identification.

A. Non-Discrimination Policy. Local education agencies may not assess or assign children to special education programs and services on the basis of national origin, race, sex, linquistic, religious, or cultural background.

B. Screening.

(1) The local education agency, jointly with the local health agency, shall provide for continuous screening of school and preschool age children, for problems which impede learning. These procedures shall be in accordance with guidelines developed jointly by the State Department of Education and the State Department of Health and Mental Hygiene, as specified in the Education Article, Sections 7-401 and 7-403, Annotated Code of Maryland.

(2) A screening program shall be designed and conducted for all children of kindergarten age or upon first entry, and shall include, but not be limited to:

(a) Information including the age at which developmental milestones were attained, existence of possible special needs, results of previous assessments and evaluations,

history of placement in special education programs, and history of treatment received for disabilities (this information shall be sought from parents, as appropriate);

(b) A screening which includes the child's visual, auditory, and motor functioning, separately or in integration;

(c) A language screening including receptive, inner, or symbolic and expressive language in English and in the child's primary language if it is other than English, and in academic areas where appropriate.

(3) A comprehensive screening, similar to the kindergarten screening (see Section B(2), above), but adjusted for the child's developmental level, shall be provided to children within 30 calendar days of a request from the parents or guardians.

(4) Each local education agency and local department of health shall use screening personnel who are under the direct supervision of licensed, approved, or board registered personnel in a speciality area qualifying them to do the specific screening which is being performed.

(5) A child identified with a reasonable likelihood of having special educational needs shall be referred for an appropriate educational assessment (in accordance with Section C, below). This assessment shall occur within 45 calendar days of the referral.

(6) The results of all such screening shall be reported to the home school ARD.

C. Assessment.

(1) The local education agency shall provide an appropriate educational assessment in the child's primary language for all children identified through established screening procedures as potentially in need of special education programs. This assessment shall consist of reading, math, spelling, written and oral language, and perceptual motor functioning, as appropriate.

(2) The following assessments shall be provided in addition to the required educational assessment as appropriate:

(a) An assessment of cognitive factors shall include one or more of the following: psychological, speech or language, or both, as appropriate, and shall be administered by a professional certified in the specialty area by the State Department of Education;

(b) An assessment of emotional factors shall include one or more of the following: a psychiatric evaluation by a licensed psychiatrist, an evaluation by a certified or licensed psychologist, or a State Department of Education certified school psychologist;

(c) An assessment of physical factors shall include one or more of the following as appropriate: medical, ophthalmological,

audiological, neurological. They shall be administered by individuals licensed in the respective speciality areas.

(3) Each assessment report shall include, in addition to any matters required by Federal Regulation:

(a) A description of behaviors which establishes the existence of a handicapping condition;

(b) A statement which describes, in terms of special education services needed, the child's performance as it deviates from developmental milestones and/or general education objectives, as appropriate.

(c) A statement of criteria used to establish the deviation of the child's behaviors from those of non-handicapped age mates which establishes the eligibility for special education services, and the criteria used to make determinations required by C(2)(a), (b) and (c) above.

(d) The signature of the individual who has conducted the assessment.

(4) The results of the assessment shall be written and shall include patterns of development, learning, and behavior, as well as academic achievement.

(5) The assessment information is used by the Admission, Review and Dismissal (ARD) Committee in carrying out its responsibilities for the determination of program placement.

(6) Any assessment may be waived, if a comparable assessment, in the opinion of the Admission, Review and Dismissal Committee, has been completed during the 6 months before the time of the scheduled school assessment and made available to the school, provided the parents and local education agency have agreed to the waiver.

D. Record Keeping. The local education agency shall establish procedures to ensure the maintenance of a current census of all children, from birth through the age of 20, who require special education services. This census, and other such record keeping as required, shall be reported to the State Department of Education and maintained in accordance with the State and Federal privacy standards.

.06 Programming.

A. Program Standards: Statement of Purpose, Philosophy, and Objectives.

(1) It shall be the responsibility of each educational agency to formulate a written statement describing the purpose, philosophy, and objectives of the program.

(2) This statement shall include the primary reasons for which the program is established and the goals toward which the program's efforts are directed. It shall be sufficiently explicit to facilitate an evaluation in terms of what the program is striving to accomplish and the extent to which it is meeting the needs of the pupils who are enrolled.

(3) The statement of purpose, philosophy, and objectives shall be used as a guide on such matters as the educational needs and number of pupils to be served; the instructional programs to be offered; and the services to be provided to pupils; as well as selection of faculty and staff, design and use of facilities, financing, and organization.

B. Days and Hours of Operation.

(1) A day of instruction for an individual pupil may be modified according to his age and unique educational needs only as determined by the Admission, Review, and Dismissal Committee.

(2) Each education agency shall develop a yearly calendar, before the opening date, which includes the dates for the opening and closing of school, days of instruction, holidays, vacations, and other pertinent events or activities in the schedule for the year. The yearly calendar shall be consistent with the required school year as defined in the Education Article, Section 7-103, Annotated Code of Maryland, unless otherwise extended by the Admission, Review, and Dismissal Committee for an individual pupil.

C. Admission, Review, and Dismissal Process.

(1) Each local education agency shall maintain an Admission, Review, and Dismissal Committee or committees, which serves with the authority of the local superintendent of schools, and is composed of the following:

(a) A chairperson designated by the local superintendent;

(b) Individuals who are familiar with the child's current level of functioning (these individuals shall include a special educator and interdisciplinary personnel from the local education agency and the local health department), and other public agencies, as appropriate.

(c) Others as deemed appropriate, such as individuals expected to become deliverers of direct service to the student.

(2) If a student is currently being served in a nonpublic school or state funded or operated institution, representatives from that program shall be invited to provide information relating to the student's educational needs. These representatives shall be informed 10 calendar days before scheduled meetings.

(3) The responsibilities of the committee or committees shall be as follows:

(a) Referral.

(i) To receive referrals for special education services within 30 calendar days of the completion of the assessment.

(ii) To identify personnel and arrange for appropriate assessment procedures in accordance with Regulation .05C, and review the results of these assessments.

(b) Placement.

(i) To determine all special education level placements within the local school system;

(ii) To recommend all nonpublic tuition placements to the State Department of Education in accordance with Section F, below;

(iii) To designate individuals who will be responsible for developing the individualized education program within 30 calendar days of the committee placement decision;

(iv) To approve the individualized education program;

(v) To consider the logistics of transporting the student to the program when considering appropriate placements.

(c) Review.

(i) To review pupil progress based upon the individualized education program in accordance with Section D, below;

(ii) To recommend modifications in the individualized education program, as necessary;

(iii) To recommend dismissal from special education program, if appropriate;

(iv) To review pupil placement decisions in cases where information not previously available is presented to the ARD Committee.

(4) Parents or guardians, and students as appropriate, shall be informed in writing in their primary mode of communication of their rights with respect to each of the following functions and responsibilities of the Admission, Review, and Dismissal Committee.

(5) The local education agency shall develop procedures for:

(a) Informing the parents or guardians in writing when the child is referred to the Admission, Review, and Dismissal Committee, at least 10 calendar days before the meeting;

(b) Securing written permission before assessment is initiated;

(c) Informing parents or guardians of the assessment results and the possibility of a special education program placement;

(d) Obtaining written permission for placement and for reporting this placement to the State Department of Education;

(e) Informing parents of the review schedules and process;

(f) Reviewing by the Admission, Review, and Dismissal Committee of information not previously available to the committee.

D. Individualized Education Program.

(1) The individualized education program is a written comprehensive outline for total special education services which describes the special education needs of the child and the services to be provided to meet those needs. The goals, objectives, activities and materials shall be adapted to the needs, interests, and abilities of each student.

(2) The individualized education program shall be developed in a meeting by a representative or representatives of the local education agency as designated by the Admission, Review, and Dismissal Committee; the parents or guardians; the child's teacher or teachers, the student, when appropriate; and when feasible, all other persons directly responsible for the implementation of the individualized education program.

(3) The individualized education program shall be developed before special education program placement is implemented, and it shall be approved by the ARD Committee, signed by the parents, and implemented no more than 30 school calendar days after its development.

(4) The individualized education program for each child shall include:

(a) A statement of the child's special education needs and present levels of educational performance;

(b) A statement of annual goals, including short-term instructional objectives;

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in general educational programs;

(d) The projected dates for initiation of services and the anticipated duration of the services; and

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved;

(f) None of the above shall be construed to cause any agency, teacher, or other person to be held accountable if a child does not achieve the growth projected in the annual goals or short-term goals and objectives.

(5) Each local education agency's Admission, Review, and Dismissal Committee shall provide for a review of the progress of each child who is receiving special education services. This review of each child's progress shall be completed within 60 school days after the initial placement.

(6) If the review by the Admission, Review, and Dismissal Committee suggests that the initial placement was inappropriate or that different services would now benefit the child, or both, reassignment or alteration in service shall be made as appropriate. The written consent of parents or guardians shall be secured in accordance with Section C(5)(d), above.

(7) Additional review of the child's program shall occur at least annually thereafter and shall be conducted to determine the following:

(a) Whether the child has achieved the goals set forth in his individualized education program;

(b) Whether the child has met the criteria which indicate readiness to enter into a less intensive special education program level;

(c) Whether the program the child is in should be specifically modified to render it more suitable to the child's needs;

(d) A written summary of this review shall be made available to the parents of the child within 10 school days after the review is completed.

E. Services.

(1) Children with special needs shall be served in special education programs appropriate to their developmental level and educational needs. The Admission, Review, and Dismissal Committee in all cases shall verify the existence of an educational handicapping condition and its degree, based upon the assessment information available (see Regulation .05C(3)(c), above). The individualized education program

shall designate the appropriate program level or levels placement. After determining initial program placement, the local education agency shall educate the child in the least restrictive appropriate educational program level. Students may be served concurrently at more than one program level. Students shall be served in compatible age, developmental, and instructional groupings. Separate schooling, self-contained classes, or other removal of the child with special needs from the general education environment shall occur only when, and to the extent that, the student's special educational need is such that education in a less restrictive environment cannot be accomplished satisfactorily even with the use of supplementary aids and services. In making this determination the needs of other children in the classroom may be considered.

(2) Professionals may provide service concurrently at more than one program level. Caseloads shall be adjusted accordingly based upon the full time equivalent assignment. In establishing the individual professional caseload, consideration should be given to the individualized education program of the students served by the professionals.

(3) A complete description of special education programs, services, and criteria for the child's eligibility shall be available to the public. The following shall constitute the levels of special education service:

(a) Level I may be considered appropriate for the child who has been identified through the educational assessment as having an educational handicap in one or more of the following areas: cognitive, emotional, physical, or all of these, and who may be appropriately served in the general education program

receiving supplementary services. Level I is designed to assist the non-special education teacher in the development and implementation of a special education IEP through the provision of supplementary services which are not provided in the general program. Services provided include direct or indirect instructional consultation services to the teacher, and/or the provision of special materials and equipment. The minimum staffing ratio for Level I service shall be one full time equivalent professional for each 150 non-special education teachers employed by the local education agency.

(b) Level II may be considered appropriate for the student who has been identified through the educational assessment as having an educational handicap in one or more of the following areas: cognitive, emotional, physical, or all of these, and who may be appropriately served by receiving service through the special education program not to exceed an average of one hour per school day. Level II is designed to provide a program of special educational intervention directly to the student. This level is designed to meet the special educational needs of the handicapped child who requires a degree of educational intervention not available in the general education classroom. Services are provided by a professional on an intermittent or continuous basis (for example, vision, speech and language).

The instruction may be given on an individual basis or in small groups. In addition, personnel serve as a resource to the teacher in suggesting activities which would enhance the student's achievement. The maximum caseload for Level II service shall be an average of 60 handicapped students with special educational needs per each full time equivalent professional.

(c) Level III may be considered appropriate for the child who has been identified through the educational assessment as having an educational handicap in one or more of the following areas: cognitive, emotional, physical, or all of these, and who may be appropriately served by receiving special educational services not to exceed an average of three hours per school day. Level III is designed to provide periods of more intensive special educational services (for example, academic, vision, speech, language) on a regular basis. In addition, personnel serve as a resource to the teacher in suggesting activities which would enhance the student's achievement. The maximum caseload for Level III services shall be an average of 20 different handicapped students with special educational needs per full time certified special education teacher or an average of 30 different handicapped students, if a full time aide is also provided.

(d) Level IV may be considered appropriate for the student who has been identified through the educational assessment as having handicaps in one or more of the following areas:

cognitive, emotional, physical, or all of these, and who may be appropriately served by receiving special educational services up to 6 hours per school day. Level IV is designed to provide a special class within a general education facility in which a student receives most or all of his basic educational program. Services include special education provided by a special education teacher and related services as described in the IEP. The student shall participate in the general program as appropriate and shall have access to other supplementary services consistent with those provided to students in the general education program. The maximum class size for Level IV service at the elementary level shall be an average of 10 handicapped students with special educational needs per full time teacher or an average of 13 students if a full time aide is also provided. The maximum class size for Level IV service at the secondary level shall be an average of 12 students with special educational needs per full time certified special eduction teacher or an average of 15 students, if a full time aide is provided.

(e) Level V may be considered appropriate for the student who has been identified through the educational assessment as having a handicapping condition in one or more of the following areas: cognitive, emotional, or physical, or all of these, and who requires a comprehensive special education setting for his entire school day in a special wing or day school. Services are provided in a comprehensive special education

setting which includes special equipment and related services. The maximum class size for Level V service for handicapped children shall be an average of six handicapped students with special educational needs per full time certified special education teacher or an average of nine if a full time aide is provided. The maximum class size for Level V service for children with significant physical impairments shall be an average of seven handicapped students per full time certified special education teacher and a full time aide.

(f) Level VI may be considered appropriate for the student who has been identified through the educational assessment as having a handicap in one or more of the following areas: cognitive, emotional, or physical, or all of these, and who requires 24 hour special education programming and personal care. Level VI is designed to provide instruction or treatment, or both, on a short or long-term basis in a residential setting, which includes a comprehensive special education program, special equipment, related services and 24-hour personal care. The maximum class size for Level VI service shall be an average of four handicapped students with special educational needs per full time certified or licensed professional or an average of seven, per class where an aide is present.

(4) Other Program Provisions.

(a) Home and hospital instruction is designed to provide short-

term itinerant instructional services to students with physical disabilities or in emotional crisis. Services provided include:

(i) Instructional service to the student who is being maintained at home or in a hospital for purposes of convalescence or treatment and is restricted by a physician for reasons of physical health from attending a school-based program. The period of time this program will be provided shall vary with the severity of the medical restrictions.

(ii) Instructional service to a student in emotional crisis who is being maintained at home or in a hospital shall be available only on an emergency basis. This service shall not exceed 60 consecutive school calendar days (minimum of six hours/week) pending placement in an established educational program.

(b) Early childhood programs are designed to provide a program of educational intervention directly to the handicapped child from birth through four years old, to the parent, or both. Levels of service as delineated above shall be available as appropriate. In addition, parent-infant programs using itinerant personnel may be provided. The itinerant teacher serves as a resource to the parent in suggesting activities which would enhance the child's development. The maximum case load for parent-infant service shall be 10 families to each full-time equivalent professional.

F. Nonpublic Institutions and Child Placement Approval Authority.

(1) The placement of handicapped children into programs offered by

approved nonpublic institutions shall be in accordance with the Education Article, Sections 8-401, (a) - 8-409 and 8-414, Annotated Code of Maryland, and the requirements in these regulations.

(2) Program Placement Approval.

(a) A handicapped child may be considered for placement into a nonpublic special education program when it is shown that an appropriate program of special education and related services for the child are not available in the local education agency or available free of charge in an appropriate State operated program. The services that are unavailable in the local school systems are provided as part of a special education program in an approved nonpublic institution. A determination that the necessary program is not available shall take into account all free special education services provided by other local or State agencies, or both, providing services are within commuting distance from the child's place of residence.

(b) The placement of a child in such an approved nonpublic special education program shall occur in a manner consistent with the identification, assessment, and placement of other handicapped children within the responsible local education agency. A child recommended for nonpublic placement shall be afforded all the rights provided by State and Federal laws and their governing regulations.

(c) A handicapped child may be approved for nonpublic school program placement only by the State Department of Education and in accordance with these Regulations, subject to the provisions of Subsections 4 and 5 of Section F of this Regulation. All approved placements shall be for a period of not more than 1 year as specified in the approval instrument and are to be reviewed annually. The State Department of Education shall have the authority, subject to the provisions of this Regulation, to determine the nonpublic institution into which a child's placement may be approved, to approve the placement of a child into the program offered by that nonpublic institution, to approve the cost of the program, and to establish and authorize the allowable amounts of payment or reimbursement.

(d) In providing or arranging for special education services in an approved nonpublic special education program, the parents or guardians of the child shall be required to pay the following, (in accordance with their ability to pay as determined by the State Superintendent of Schools): * raw food costs not normally provided in the public schools and an amount reasonably estimated to represent other costs which would normally be incurred by parents or guardians in caring for a child enrolled in a local public school and living at home.

(e) When it has been determined by the local ARD Committee and the State Department of Education on the basis of verified evidence that a child should not attend the appropriate local public school system special education program because of the condition of the child's home circumstances, the State Department of

* By Maryland State Board of Education on December 20, 1978, Resolution No. 1978-64, payment of raw food costs has been suspended.

Education may upon the request of the responsible local education agency approve the placement of a youngster in an alternate special education program in cooperation with the child's family and the appropriate State or local agency responsible for the child's care. The State Department of Education may authorize the reimbursement of the cost of the education program up to the amount equivalent to the cost of the school program he would have attended while living at home. The local education agency and the State Department of Education shall seek the support of other local and State agencies to provide any additional funds for the placement.

(3) Placement Eligibility Criteria.

(a) The child is determined by State-approved LEA procedures to be a handicapped child who is eligible for Level V services or a child eligible for Level VI services.

(b) The responsible LEA or State and local agencies, or both, singularly or in combination, cannot offer the appropriate special education and related services required to provide an appropriate program for the child.

(c) The child is being recommended for placement into a nonpublic special education program that is appropriate to his verified educational needs and is in the least restrictive appropriate setting.

(d) The LEA and parents, guardians, or surrogate shall adhere to the requirements of the appropriate State and Federal laws, regulations, administrative guidelines, and procedures set forth in administering the approval of a child's placement into a nonpublic special education program.

(4) Special Rules Applicable to Certain Nonpublic Placements

(a) The rules in this Subsection 4 of Section F of this Regulation apply to the approval of the placement of a child in a nonpublic program which meets both of these requirements:

(i) the cost of the program shall not require a contribution from the State in addition to that specified under the Education Article, Section 8-417.3 or Section 8-417.2, Annotated Code of Maryland.

(ii) the program is located in or within daily commuting distance from the child's place of residence.

(b) Notwithstanding other provisions of Section F of this Regulation, local education agencies shall work cooperatively with nonpublic schools providing programs meeting the requirements of Section F(4)(a) of this Regulation. A local education agency may approve the placement of a handicapped child in a nonpublic facility that provides an appropriate program of special education services as defined in Section 13.04.01.02.C for the child and meets the requirements of Subsection (a). The State Department of Education will approve such a placement approved by the local education agency unless the State Department of Education identifies and approves a different placement (which the State Department of Education may require the local education agency to establish) upon the basis of a determination by the State Department of Education that the different placement will provide the child an appropriate education, that is less costly and provided in a less restrictive environment.

(c) A child who has been or is approved by the State Department of Education for a nonpublic placement meeting the requirements of Subsection (a) of this Section 13.04.01.06.F. (4) for the 1977-78 school year will continue to be approved for the same placement from year to year thereafter, as long as the nonpublic program continues to meet the requirements of Subsection (a), unless and until the local education agency or the State Department of Education identifies and approves a different placement (which the State Department of Education may require the local education agency to establish) upon the basis of a determination that the different placement will provide the child with an appropriate education that is less costly and provided in a less restrictive environment.

(d) The State Department of Education will not disapprove any nonpublic placement approved for a child by the local education agency pursuant to Subsections (b) or (c) of this Section 13.04.01.06.F (4) on the ground that the potential exists for the local education agency to establish an equally appropriate program for the child.

(e) If the State Department of Education disapproves a nonpublic placement approved by a local education agency under Subsections (b) and (c) of this Section 13.04.01.06.F (4) on the ground that some other placement

will provide the child with an appropriate program which is less costly and/or provided in a less restrictive environment, its determination in that regard will be subject to appeal by the parents or the local education agency under the state-level hearing procedures hereinafter set forth. At any such hearing, the State Department of Education shall bear the burden of proving that the other placement will provide the child with an appropriate program which is less costly and/or provided in a less restrictive environment.

(f) When a new placement is under consideration for a handicapped child, the State Department of Education will approve placement in a nonpublic program that does not meet the requirements of Subsection (a) only if it is shown that a free appropriate program is not available for the child in any local public facility or in a nonpublic facility meeting the requirements of Subsection (a). Children who are presently placed in nonpublic programs that do not meet the requirements of Subsection (a) may be transferred to fill vacancies arising in local public facilities providing free programs or in nonpublic facilities meeting the requirements of Subsection (a) if: (i) the public or nonpublic facility to which the child is to be transferred is staffed and

equipped to provide an appropriate program for the child and the public or nonpublic agency that operates the facility concurs in the proposed placement and (ii) the transfer of the child will not have serious adverse effects upon the child's education or physical, emotional, or cognitive development.

(5) Procedures

(a) Applications for approval of nonpublic placements will be made on forms prescribed by the State Department of Education. The forms and documentation required by the State Department of Education will be forwarded by the local education agency to the State Department of Education together with the recommendations of the local education agency and any approvals or disapprovals of placements sought under Subsections (b) and (c) of Section 13.04.01.06.F (4), within times prescribed by the State Department of Education. The local education agency will notify the parents, guardians or surrogates of such recommendations and approvals or disapprovals and the identity of all documents supplied to the State Department of Education, and will supply parents, guardians or surrogates with copies of all recommendations, approvals, disapprovals and documents, upon request, at actual cost. Parents, guardians or surrogates may supply the State Department of Education with additional information or documentation if they wish to do so.

(b) Parents, guardians, or surrogates will be advised of their hearing rights under this Subsection (b) and under Section 13.04.01.07. If requested, parents, guardians or surrogates shall be entitled to local level review under Section 13.04.01.07.A with respect to recommendations or decisions of the local education agency regarding nonpublic placements, but the decision at the local level hearing shall be subject to approval or disapproval by the State Department of Education under this Section 13.04.01.06.F. If this local level review is not requested, forms and documentation will be forwarded directly to the State Department of Education as provided in Subsection (a) above for approval or disapproval by the Department under this Section 13.04.01.06.F. The decisions of the State Department of Education with respect to nonpublic placements under this Section 13.04.01.06.F. shall be subject to State level procedures prescribed by Section 13.04.01.07.B, whether or not the decision was preceded by a local level hearing.

(c) The disapproval of a nonpublic placement that has been approved previously by the State Department of Education shall not be effective for a subsequent year until applications for administrative and judicial review prescribed by 20 USC 1415 or by the Education Article, Section 8-415 of the Maryland Code, if any, have resulted in a final decision.

.07 Hearing Procedures.

The following procedures are established to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to their right to free appropriate public education.

A. Local Hearing Procedures.

(1) Each local education agency shall cooperate with parent(s) or guardian(s), or both, of handicapped children who are enrolled in or are in need of special education programs in all matters pertaining to the education and welfare of the child and in the full evaluation and exploration of educational placements for the child. The local education agency shall establish and implement hearing procedures when a request is made in writing, to review the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

(2) The local education agency through the responsible officials shall provide notice to the parent(s) or guardian(s) of a child in writing, which shall be in the parent's or guardian's primary language, (other than English if necessary and feasible) either delivered personnally or mailed by first class mail, postage prepaid, directed to their address as shown on the records of the school system in the following circumstances. Notice and consent by the parent(s) or guardian(s) are required before initiating assessment procedures, before initial placement of a child in a program providing special education

and related services, and before transferring a child from one program of special education to another significantly different program. Notice is also required in any other case in which the local education agency:

a. proposed to initiate or change, or

b. refuses a request by parent(s) or guardian(s) to initiate or change,

the identification, evaluation, or educational placement of the child or the provision of a free appropriate education for the child. Except in emergency situations governed by Section A, (3), below, the parent(s) or guardian(s) who so requests shall be given the opportunity to participate in an informal placement conference at a time before the implementation of any proposed placement action. These conferences may be scheduled either before or after formal notice is issued. In emergency situations governed by Section A, (3), below, an opportunity to participate in an informal conference immediately following the implementation of any emergency proposed placement action shall be afforded to the parent(s) or guardian(s). This requirement of an opportunity to consult should not be interpreted as inhibiting or discouraging earlier or more frequent consultations.

(3) The notices required by Section 2 shall be mailed at least 20 calendar days in advance of the proposed action except in emergency situations, where, in the opinion of one or more

local school officials at the principal level or higher, immediate implementation of a proposed placement action is necessary to protect the health or safety of the child or of other persons. In emergency situations, the notices shall be furnished as soon as possible but not later than the second school day following the placement action. A hearing will be scheduled within 20 calendar days, when requested by the parent(s) or guardian(s). The schedule for the decision and implementation shall be in accordance with Part (9) of this Section.

(4) The notice of the proposed placement action required by these regulations shall contain the following:

(a) A description of the proposed placement action and its effective date;

(b) A clear and concise statement of the reasons for the proposed action and a listing of any other possible appropriate actions, and a description of the records used as a basis for the decision;

(c) A statement that the parent(s) or guardian(s) have the right to be heard with regard to the proposed action by the person or persons designated as responsible for conducting a hearing;

(d) A description of the procedures for requesting this hearing, including an explanation that this hearing may be requested.

(e) A general statement of the procedures applicable to these hearings, including specific reference to the

rights afforded by this regulation and a statement that a complete copy of these regulations may be obtained at the local education agency office.

(5) Parent(s) or guardian(s) shall have the right to inspect and copy at reasonable times, both before any hearing and otherwise, all records of the local educational agency and its agents and employees, pertaining to the child, including all tests or reports upon which the proposed action may be based and such other relevant records pertaining to the proposed action as the school system may deem relevant.

(6) Parent(s) or guardian(s) shall have the right to be represented by counsel or other individuals at any stage during the hearing process.

(a) Parent(s) or guardian(s) shall have the right to obtain an independent assessment of the child, the expense of which is to be borne in accordance with applicable federal regulations. Parent(s) or guardian(s) shall also have the right to obtain an independent assessment at private expense. The results of these assessments must be considered by the local education agency in any placement decision and may be presented as evidence at a hearing under Section A, (7).

(b) The local education agency shall provide to parents, on request, information about where an independent assessment may be obtained.

(c) The local education agency shall inform the parent of any free or low-cost legal or other relevant services

available in the area.

(7) Hearings held pursuant to these regulations shall be conducted in accordance with the following minimum requirements:

(a) Parent(s) or guardian(s) shall have the opportunity to present competent and relevant evidence, including but not limited to the results of independent assessments; both in documentary form and through witnesses. The local education agency shall not be required to bear the responsibility for any fees which may be charged for evaluations or representation except as provided in these regulations and applicable federal law and regulations and locally established policy.

(b) Procedures shall be adopted affording parent(s) or guardian(s) the opportunity to require the attendance and testimony of employees of the local education agency who may have direct knowledge pertinent to the subject to the inquiry. In requiring employees to testify, parties to the hearing shall give consideration to minimizing interference with the regular duties of employees.

(c) Parent(s) or guardian(s) shall be afforded the opportunity to question witnesses called by the local education agency.

(d) A person who was directly responsible for the recommendation of the proposed action, or who has furnished significant advice or consultation in reference to the recommendation, may not serve as a hearing

officer or member of a hearing panel. The hearing officer, or persons included on the hearing panel, shall be knowledgeable in the fields and areas of significance to the educational review of the child. A hearing conducted pursuant to these regulations may not be conducted by the school board or by an individual who is an employee of the agency involved in any capacity other than as a hearing officer or who has any interest conflicting with objectivity.

(e) The hearing shall be closed unless the parent(s) or guardian(s) requests that the hearing be open. All persons present shall be identified for the record at the initiation of the hearing. Parents have the right to have their child attend.

(f) The local education agency shall arrange for a tape recording or other record of the hearing unless all parties agree that this record need not be made. Tape recordings or written records shall be made available upon request to parent(s) or guardian(s) appealing the decision at no more than the actual cost of duplication.

(g) The decision of the hearing officer or panel shall be based on the testimony and documented information on the record at the hearing, before the hearing officer.

(h) It shall be the initial responsibility of the party proposing any action to present evidence which supports its appropriateness. Evidence opposing the action shall then be

presented. The responsibility for explaining the initial placement recommendation shall be upon the local education agency. A placement shall be deemed appropriate if it provides special education and related services which: are provided at public expense, under public supervision and direction, and without charge; meet the standards of the state educational agency; are provided in conformity with the individualized education program; meet the educational needs of the child; and cannot be provided in any significantly less restrictive programs which would satisfy these needs equally well.

(i) The hearing officer or panel may request an independent assessment, which shall be at public expense.

(j) Parties shall have the right to prohibit the introduction of any evidence at a hearing that has not been disclosed to that party at least five days before the hearing.

(8) After a hearing has been requested and held in the manner provided, the parent(s) or guardian(s), or upon request, their counsel or representative of record, shall be informed in writing of the final decision, including a statement of the findings and conclusions upon which it is based. The findings and conclusions in any placement decision shall (a) specify the nature and severity of any handicaps the child has, (b) any special educational needs the child has as a result of those handicaps, and (c) any modification of the child's individualized

education program required to provide the child with an appropriate program to meet those needs, pursuant to Section A, (7) (h) above and (d) shall identify a placement that will provide the child with the required appropriate program. The parent(s) or guardian(s) or their counsel or representative shall also be informed of their right to appeal, and the procedure for taking that appeal to the next highest authority. The hearing shall be held and the decision shall be made and written notice thereof provided within 45 calendar days from the request for the hearing. The hearing officer may grant an extension beyond this time-period at the request of either party, but the time may not be extended beyond 60 days.

(9) When a hearing is requested by parent(s) or guardian(s) concerning a proposed placement action and the child is at the time enrolled in a free educational program, the local education agency may not effect any change in the child's placement status without the consent of the parent(s) or guardian(s), or pursuant to a decision of the hearing officer or panel, whichever occurs first, except in emergency situations determined in accordance with Regulation .07A(3), above. The decision of the hearing officer or panel shall be implemented as soon as possible, but in any event within no sooner than 14 school days nor later than 30 school days after

the decision; provided, that during the pendency of appeals pursuant to Regulation .07B(10), and .07B(11), below, unless the State or local education agency and the parent(s) or guardian(s) otherwise agree, the child shall remain in the then current educational placement of this child.

(10) When a hearing is requested concerning a proposed placement action and the child is not currently receiving free educational services, the child shall be placed immediately if the parents consent and a special expedited hearing schedule shall apply. In these cases, the hearing shall be held 20 calendar days of request thereof; a written decision shall be issued within 15 calendar days of the hearing; and the decision shall be implemented within 15 school days of the decision unless specifically stayed pending appeal or otherwise by the hearing officer or panel; provided, that during the pendency of appeals pursuant to Regulation .07B(11), below, unless the local education agency and the parent(s) or guardian(s) otherwise agree, the child shall remain in his or her then current educational placement, or, if the child is not yet receiving free educational services either because the parents did not consent to immediate placement pursuant to this subsection (10) or for any other reason, the child shall be placed in the local public school program until all these appeals have been concluded, if the parent(s) or guardian(s) consent.

(11) In any disciplinary case initially deemed to warrant suspension or expulsion pursuant to the Education Article, Section 7-304, Annotated Code of Maryland, if credible evidence is presented as a result of the investigation provided for in the Education Article, Section 7-304, Annotated Code of Maryland, to the local education agency indicating that the child may be handicapped and eligible for placement in a special education program, an evaluation of this child shall be initiated within 10 school days thereafter at the direction of the local education agency. An independent evaluation may be obtained by the parent(s) or guardian(s) of the child at their own expense. These evaluations shall be considered by the Admission, Review and Dismissal Committee. If it is established that the child is handicapped and that the handicapping condition was a significant cause of the behavior which prompted the disciplinary action, then any suspension or expulsion shall be reconsidered forthwith and further action with regard to placement of the child shall be considered and taken in accordance with these regulations. In all other respects, neither the provisions of .07, A., (3), (9), (10) thereof relative to the implementation of proposed placement actions in emergency situations nor the aforegoing, shall affect the continuing effectiveness of any action properly taken in the disciplinary proceedings pursuant to the Education Article, Section 7-304, Annotated Code of Maryland, pending further action with regard to possible placement in a special education program in accordance with these regulations.

(12) Each board of education shall develop hearing procedures which, at a minimum, meet the requirements of these regulations and of appropriate federal regulations. If local procedures are not established within 60 days of the effective date of these regulations, these regulations and appropriate federal regulations shall apply directly in lieu of locally adopted procedures and until these procedures are adopted in accordance with these regulations.

B. State Hearing Procedures.

(1) When all local procedures for providing special education programs for a handicapped child by the local education agency have been exhausted, the local education agency or the parent(s) or guardian(s) of the child may request in writing from the State Board of Education a review of the case as it relates to the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child. Any such request for a review shall occur within 30 calendar days of the final decision of the local school system. Hearings regarding State Department of Education approval of nonpublic placements shall initiate at the State level. Requests for these hearings shall be made within 30 days following the decision of the State Department of Education. In cases which initiate at the State level, contents of notice requirements shall be as described in .07A(4) above. The procedure established here shall be administered by the State Department of Education.

(2) Upon receipt of a written request for review, the State Department of Education shall provide an official application to the parent(s) or guardian(s) or local education agency.

(3) Review Hearing

(a) The decision of the State Hearing Review shall be rendered not later than 30 days after the receipt of the official application and supporting documents, including all education records of the child. A hearing or review officer may grant specific extensions of time beyond the 30-day period but in no instance may the time be extended beyond 60 days.

(b) The notice of the hearing shall include the time, date and place at which the review hearing will occur.

(4) Parent(s) or guardian(s) shall have the right to inspect and copy, at reasonable times all records of the State and local education agency, its agents and employees, pertaining to the child, including all documents which will be considered by the Hearing Review Board.

(5) Parent(s) or guardian(s) shall have the right to be represented by counsel or other individual(s) at any stage during the hearing process.

(6) The hearing shall be closed unless the parent(s) or guardian(s) requests that the hearing be open. Persons present at the request of the parent(s) or guardian(s) or the local board of education shall be identified at the initiation of the hearing. Parents have the right to have their child attend.

(7) Formal Hearing Procedures

(a) The Hearing Review Board, at the scheduled time, date, and place, may hear testimony from either of the parties pertaining to issues before it. Each side will be afforded a reasonable time to present its case.

(b) The decision of the Hearing Review Board shall be based on the information presented on the record at the State hearing.

(c) Parties to the hearing shall have the opportunity to present competent and relevant evidence, both in documentary form and through witnesses, and to require the attendance of State Department of Education and local school system employees who may have knowledge pertinent to the subject matter of the hearing.

(d) Parties to the hearing shall be afforded the opportunity to question and cross examine witnesses called by the Hearing Review Board or any other party at the hearing.

(e) Parties shall have the right to prohibit the introduction of any evidence at a hearing that has not been disclosed to that party at least five days before the hearing.

(f) Transcriptions of the proceedings shall be made available at a reasonable cost to the parent(s) or guardian(s), and local superintendent of schools within 45 calendar days. All requests for transcriptions shall be made in writing to the State Superintendent of Schools.

(8) A person may not serve as a hearing officer or member of a hearing review board who is a member of the local school board or an employee of an agency involved in the education or care of the child, or a full-time employee of the State Department of Education, or a member of the State Board of Education. A person may not serve as a member of a hearing review board who has participated in the previous assessment evaluation, provision of educational services, or in the decision process to deny services made by the local education agency, or who has an interest conflicting with objectivity. The Hearing Review Board shall consist of not less than three persons knowledgeable in the fields and areas significant to the educational review of the child. A chairperson of a hearing review board shall be knowledgeable in the field of special education and shall be appointed by the State Superintendent of Schools.

(9) The Hearing Review Board shall:

(a) Examine the entire hearing record;

(b) Insure that the procedures at the local hearing were consistent with the requirements of due process;

(c) Seek additional evidence if necessary;

(d) Have the authority to confirm, modify, reject, or prescribe alternate special education programs for the child based on the record before the Hearing Review Board.

(10) The Hearing Review Board shall have authority to require a complete and independent assessment, evaluation, and determination

of educational programs by qualified persons, the cost of which shall be paid by the State Board of Education.

(11) A final decision shall be rendered by a majority of the Hearing Review Board members. The decision shall specifically enumerate the findings and conclusion of the Hearing Review Board. The chairperson shall report the decision in writing and signed by the members of the Hearing Review Board to the State Department of Education within 5 calendar days following the hearing.

(12) The decision made by the reviewing official is final, unless a party brings a civil action.

(13) The State Superintendent of Schools or his designee shall notify the applicant in writing of the State Hearing Review Board's decision, within 5 calendar days after the rendering of the decision by the Hearing Review Board.

(14) An appeal of the decision of the Hearing Review Board may be made to the Circuit Court for the county in which the child resides or, if the child resides in Baltimore City, to any one of three common law courts of the Supreme Bench as provided by law. An appeal may also be made to a district court of the United States without regard to the amount in controversy. If the decision of the Hearing Review Board is not fully implemented, the aggrieved party may enforce it through a proceeding in the appropriate court.

SUMMARY OF PARENT INVOLVEMENT

1. Parental Involvement in Placement Procedures

2. Timeline From the Initial Screening to Implementation of the Individual Education Program (IEP).

3. Hearing Process Timelines

PARENTAL INVOLVEMENT IN PLACEMENT PROCEDURES

The proposed Bylaw requires extensive parental involvement. The following steps detail the nine points between initial identification and actual placement at which parental involvement is required.

Child is identified through routine screening as having a reasonable likelihood of needing special education services.

Step 1 - Written parental permission is secured before assessment. .06.C.(5).(b).

Step 2 - Parents or guardians are informed in writing of the assessment results and of the possibility of the need for special education services. .06.C.(5).(c).

Step 3 - Parents are informed of their right to participate in the functions of the Admission, Review and Dismissal Committee. .06.C.(4)

Step 4 - Parents are required to be invited to participate in the development of the Individual Education Program (IEP). .06.D.(2)

The IEP includes:

- a statement of present level of functioning
- a statement of annual goals, including short and long-term goals
- a statement of specific special education and related services to be provided and the extent to which the child will participate in general education
- projected date for initiation of each service and expected duration
- objective criteria for evaluation of effectiveness of the IEP
- statement concerning any special transportation needs

Step 5 - Written parental approval of the IEP is required .06.D.(3)

Step 6 - Written parental permission is obtained for placement and reporting of placement to Maryland State Department of Education (MSDE) .06.C.(5).(d)

The IEP must be implemented within 30 school calendar days .06.D.(3)

Step 7 - The appropriateness of the IEP must be reviewed within 60 school calendar days of its initiation .06.D.(5)

Parents shall be informed of the results of the review if a change in the IEP is recommended .06.D.(6)

Step 8 - Written consent of the parents must be secured for any change from original IEP as a result of the 60 day review .06.D.(6)

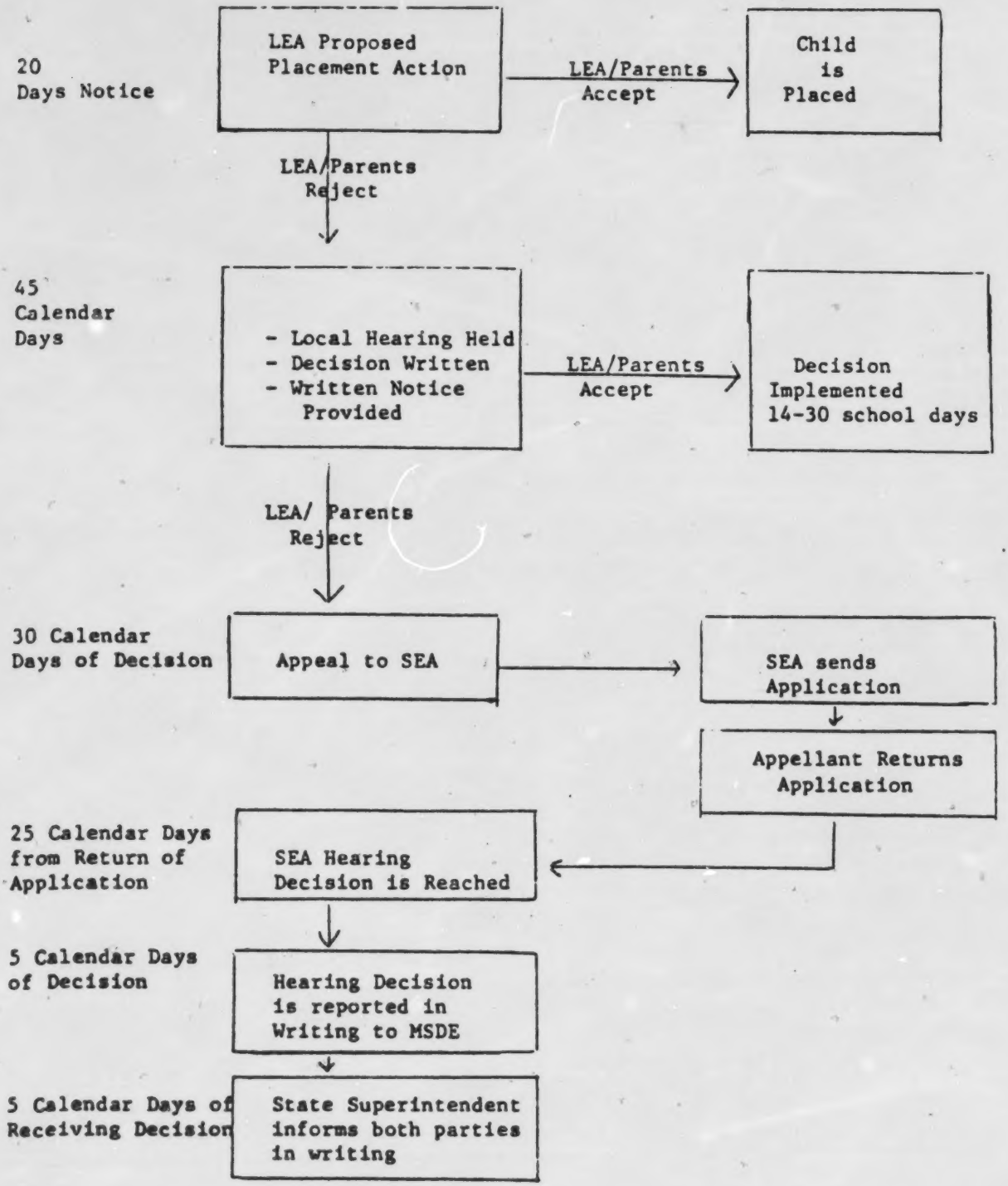
Step 9 - A review of the IEP must occur annually thereafter and a written summary must be reported to parents .06.D.(7)

In addition to the above, section .07 detail extensive due process procedures at both the state and local levels when parents and the local school system cannot mediate their differences.

TIMELINE FROM THE INITIAL SCREENING TO IMPLEMENTATION OF THE IEP

	Cumulative Timeline Total Calendar Days	Process Timeline	Process
	0	0	Parents request screening
	30	30 calendar days	Screening completed
	75	45 calendar days	Assessment completed
	105	30 calendar days	ARD Meeting held
	135	30 calendar days	IEP written and approved by ARD
Total time 25 weeks 3 days	177	30 school days	IEP implemented
Total time 39 weeks 3 days	261	60 school days	IEP reviewed for appropriateness
	275	10 school days	Written report to parents after annual review

HEARING PROCESS TIMELINES


20 Days Notice
LEA Proposed Placement Action
LEA/Parents Accept
Child is Placed
LEA/Parents Reject
45 Calendar Days
- Local Hearing Held
- Decision Written
- Written Notice Provided
LEA/Parents Accept
Decision Implemented 14-30 school days
LEA/ Parents Reject
30 Calendar Days of Decision
Appeal to SEA
SEA sends Application
Appellant Returns Application
25 Calendar Days from Return of Application
SEA Hearing Decision is Reached
5 Calendar Days of Decision
Hearing Decision is reported in Writing to MSDE
5 Calendar Days of Receiving Decision
State Superintendent informs both parties in writing

INDEX OF STATE LAW ARTICLES REFERRED TO IN BYLAW

Education Article:

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Article 78A:

Section 51

administrative policy. Wilson v. Board of Educ., 234 Md. 561, 200 A.2d 67 (1964).

And State Board may review and set aside county board's action. — The mere fact that the solution to the problem of screening employees is initially within the scope of a county board's authority does not negative the power of the State Board to review it and set it aside. Wilson v. Board of Educ., 234 Md. 561, 200 A.2d 67 (1964).

Bylaw assumed valid. — A bylaw adopted by the State Board was assumed to be a valid exercise of the power conferred by this section. Board of School Comm'rs v. Wagaman, 84 Md. 151, 35 A. 85 (1896).

Bylaw of State Board setting minimum requirement for certificates to be granted teachers was valid exercise of discretion under this section. Metcalf v. Cook, 168 Md. 475, 178 A. 219 (1935).

State Board not authorized to determine purely legal questions. — This section does not give State Board authority to determine purely legal questions; courts have jurisdiction to pass on such questions. Cases involving only proper administration of public school system are to be distinguished. Board of County School Comm'rs v. Henkel, 117 Md. 97, 83 A. 89 (1912); Board of County School Comm'rs v. Morris, 123 Md. 398, 91 A. 718 (1914); Zantzinger v. Manning, 123 Md. 169, 90 A. 839 (1914).

Legal questions are not to be determined by the State Board. Robinson v. Board of Educ., 143 F. Supp. 481 (D. Md. 1956).

The State Board cannot finally decide pure questions of law. Wilson v. Board of Educ., 234 Md. 561, 200 A.2d 67 (1964); Zeitschel v. Board of Educ., 274 Md. 69, 332 A.2d 906 (1975).

Where such questions are involved remedy may be had by mandamus. — While in matters involving proper administration of the public school system, courts will not interfere with jurisdiction of State Board, such is not the case if the determination of purely legal questions is involved. In latter case, remedy may be had by mandamus. Duer v. Dashiell, 91 Md. 660, 47 A. 1040 (1900); Underwood v. Board of County School Comm'rs, 103 Md. 181, 63 A. 221 (1906); Zantzinger v. Manning, 123 Md. 169, 90 A. 839 (1914).

State Board may not determine legal effect of contract. — This section does not authorize the county superintendent or State Board to determine the legal effect of a contract between an agency of the school system and an individual for the performance of a specified duty. County Board of Educ. v. Cearfoss, 165 Md. 178, 166 A. 732 (1933).

State Board has power to advise county boards, and it is duty of latter to act accordingly. Underwood v. Board of County School Comm'rs, 103 Md. 181, 63 A. 221 (1906); Zantzinger v. Manning, 123 Md. 169, 90 A. 839 (1914).

Scope of State Board review. — While the State Board may properly inquire into the reasons for a county board's decision to terminate a teacher's contract in order to correct abuses of authority and irregularities pertaining to education and specifically to the matter of teacher evaluation, it cannot exercise its visitatorial power arbitrarily to alter a decision of the county board lawfully made in conformity with a State Board bylaw, itself having the force of law. Zeitschel v. Board of Educ., 274 Md. 69, 332 A.2d 906 (1975).

Finality of decisions of State Board. — The State Board has statutory jurisdiction over questions arising out of administrative problems in the county schools. Its decision over matters within its jurisdiction is "final." This is a visitatorial power and wherever it exists, and is comprehensive enough to deal with the questions involved in an existing controversy, courts of equity decline all interference, and leave the parties to abide the summary decision of those clothed with the visitatorial authority. There is an exception where the exercise of discretion by the State Board is "fraudulent or corrupt or such abuse of discretion as to amount to a breach of trust." Robinson v. Board of Educ., 143 F. Supp. 481 (D. Md. 1956).

§ 2-206. Noncollegiate educational institutions.

(a) *"Noncollegiate educational institution" defined.* — In this section, "noncollegiate educational institution" means a school or other institution that offers an educational program but is not an institution of postsecondary education, as defined in § 12-201 of this article.

(b) *Exception for apprenticeship and training programs.* — This section does not apply to apprenticeship and on-the-job training programs that are subject to the approval of the Apprenticeship and Training Council.

(c) *Rules and regulations for approval and accreditation of schools.* — With the advice of the State Superintendent, the State Board shall adopt bylaws, rules, and regulations for the approval and accreditation of all public schools.

(d) *Minimum requirements for issuing certificates and diplomas.* — With the advice of the State Superintendent, the State Board shall establish minimum requirements for issuing certificates and diplomas by public and private noncollegiate educational institutions in this State.

(e) *Certificate of approval.* — (1) A noncollegiate educational institution may not operate in this State without a certificate of approval from the State Board.

(2) The State Board shall issue a certificate of approval to a noncollegiate educational institution if it finds that the facilities, conditions of entrance and scholarship, and educational qualifications and standards are adequate and appropriate for:

(i) The purposes of the institution;

(ii) The programs, training, and courses to be taught by the institution; and

(iii) The certificates and diplomas to be issued by it.

(3) The State Board may not issue a certificate of approval to an institution that practices discrimination based on race, color, or national origin.

(4) This subsection does not apply to an institution operated by a bona fide church organization, including the Amish and Mennonite church parochial schools. However, an institution that does not have a certificate of approval from the State Board may not receive State funds, except that an institution operated by a bona fide church organization is not required to have a certificate to receive State funds for eligible students in the food service program who are enrolled in nursery school through the eighth grade.

(f) *Order to correct deficiencies.* — (1) If the State Board believes that a noncollegiate educational institution does not meet the conditions or standards on which its certificate of approval was based, it shall give the institution written notice of this belief.

(2) The notice shall specify the alleged deficiencies and direct the institution to correct them within a period of not less than 30 days as set by the Board. If the institution requests a hearing within 20 days of the notice, the Board shall hold a hearing to determine the matter.

(3) The order to correct the deficiencies shall be stayed until a determination is made after the hearing.

(g) *Order to end operations.* — (1) The State Board may order a noncollegiate educational institution to end operations if the institution fails to correct the specified deficiencies within the period set by the Board and if:

(i) A hearing is not requested; or

(ii) After a hearing, the Board finds that the institution does not meet the conditions or standards.

(2) The order takes effect 15 days after it is issued.

(h) *Judicial review.* — (1) An institution has the right to judicial review of a State Board deficiency determination under this section as provided by the Administrative Procedure Act.

(2) The decision of the State Board is presumed correct and proper and the institution has the burden of proving otherwise.

(3) The State Board shall be a party to the proceeding.

(i) *Inspection, reports, and information.* — A noncollegiate educational institution shall:

(1) Be open for inspection by the State Superintendent or his designee at all reasonable times; and

(2) Furnish the reports and information required by the State Superintendent on the forms provided by the State Superintendent. (An. Code 1957, art. 77, § 11; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 11.
The only changes are in style.

Subtitle 3. State Superintendent of Schools.

§ 2-301. State Superintendent of Schools established.

There is a State Superintendent of Schools in the Department. (1978, ch. 22, § 2.)

REVISOR'S NOTE

This section is new language added as the standard language establishing a position or unit of a department.

§ 2-302. Appointment, term, salary, qualifications, removal, and vacancy.

(a) *Appointment and term.* — The State Superintendent shall be appointed by the State Board for a term of 4 years beginning on July 1 after his appointment and serves until a successor is appointed and qualifies.

(b) *Salary.* — The State Board shall fix his salary and pay it from the appropriation for the expenses and maintenance of the Department.

(c) *Qualifications.* — The State Superintendent shall:

(1) Be an experienced and competent educator;

(2) Be a graduate of an accredited college or university;

(3) Have at least 2 years of special academic and professional graduate preparation in an accredited college or university; and

(4) Have at least 7 years of experience in teaching and administration.

(d) *Removal.* — (1) The State Board may remove the State Superintendent for:

(i) Immorality;

(ii) Misconduct in office;

(iii) Insubordination;

(iv) Incompetency; or

(v) Willful neglect of duty.

(2) Before removing the State Superintendent, the State Board shall send

(i) Proposal for the purchase or sale of any ground, school site, or building;

(ii) Plan or specification for the remodeling of a school building if the remodeling costs more than $100,000;

(iii) Plan or specification for the construction of a new school building; and

(iv) Change order that costs more than $25,000 for the remodeling, restoration, or construction of a school building.

(2) If the State Superintendent disapproves any plan, specification, proposal, or change order, he shall state in writing the reasons for his disapproval.

(3) If the construction is to be done by a county board, the board may not begin until the plans and specifications are approved in writing by the State Superintendent.

(4) If the construction is to be done by contract, the contract is invalid without the written approval of the State Superintendent.

REVISOR'S NOTE

This subsection formerly appeared as Article 77, § 26.
The only changes are in style.

(g) *Certification of teachers.* — (1) The State Superintendent shall certificate the professional personnel in each public school in accordance with this article and subject to the bylaws, rules, and regulations of the State Board.

(2) Renewal requirements for any teacher certificated may be waived for a teacher who:

(i) Is 55 years old or older; and

(ii) Has been employed in public or approved nonpublic school service for at least 20 years.

REVISOR'S NOTE

This subsection formerly appeared as Article 77, § 27.
The only changes are in style.

(h) *Approval and certification of programs offered by State institutions.* — (1) If the program is based on and complies with standards established by the bylaws, rules, and regulations of the State Board, the State Superintendent shall approve any program of instruction offered by a State institution under the supervision of:

(i) The Juvenile Services Administration or Mental Hygiene Administration of the Department of Health and Mental Hygiene;

(ii) The Department of Public Safety and Correctional Services; or

(iii) The Residential School located within the Institute of Psychiatry and Human Behavior of the University Hospital.

(2) If the State Superintendent grants approval, he shall issue a certificate of approval for the program to the institution that offers the program.

(3) The certificate may be revoked for cause by the State Superintendent.

(4) Each institution that offers an approved program shall:

(i) Be open at all reasonable times for inspection of the program by the State Superintendent or his designated agent; and

(ii) Furnish the information and reports that the State Superintendent considers necessary for evaluation of the program.

(5) The State Superintendent shall issue a certificate of completion of credit to a resident of an institution who successfully completes an approved program of instruction.

REVISOR'S NOTE

This subsection formerly appeared as Article 77, § 28.
The only changes are in style.

(i) *Visual and auditory aids.* — (1) The State Superintendent may furnish visual and auditory aids, educational television, and any other aids to facilitate instruction in all subjects in any school, institution, or organization under the supervision of the State Board.

(2) Material collected for this purpose may be made available for a limited time to any responsible institution or organization for the benefit of citizens of this State.

(3) The State Superintendent may make contracts to carry out the provisions of this subsection.

REVISOR'S NOTE

This subsection formerly appeared as Article 77, § 29.
The only changes are in style.

(j) *Other duties.* — The State Superintendent shall perform any other duties assigned to him:

(1) Under this article; or

(2) By the State Board.

REVISOR'S NOTE

This subsection formerly appeared as Article 77, § 33.
The only changes are in style.

REVISOR'S NOTE

This section formerly appeared as the first sentence of Article 77, § 73.

In this section, the references to past dates have been deleted as obsolete.

The only other changes are in style.

The balance of Article 77, § 73 now appears as § 7-103 of this subtitle.

§ 7-102. Disclosure affidavits for parents of children entering Pringe George's County schools.

(a) *County board to develop form.* — The Prince George's County Board shall develop an affidavit of disclosure form to be completed and signed by the parents or guardians of a student who is entering the public schools of Prince George's County.

(b) *Completion of disclosure form prerequisite to admission.* — By regulation, the county board shall make completion of an affidavit of disclosure a prerequisite for admission to the public schools, except that parents and guardians who are newly arrived residents shall be allowed 30 days after enrollment, if necessary, to complete the affidavit.

(c) *Disclosure limited to ascertaining residency.* — The purpose of the affidavit of disclosure is limited to ascertaining from the parents or guardians of a student in the public schools:

(1) Their legal residence; and

(2) The duration of their residency in this State.

(d) *Attestation; witnesses.* — The parents or guardians who complete the affidavit of disclosure shall attest to the truth of the information in the affidavit by their signature which shall be witnessed by the individuals designated by the county board under appropriate rules and regulations.

(e) *Penalty.* — (1) Failure to complete the affidavit of disclosure truthfully by a parent or guardian is a misdemeanor.

(2) Any person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $250. (An. Code 1957, art. 77, § 73A; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 73A.

The only changes are in style.

§ 7-103. Required school days and holidays.

(a) *Schools to be open for 180 days.* — Except as provided in subsection (b) of this section, each public school under the jurisdiction of a county board shall be kept open:

(1) For at least 180 actual school days during a 10-month period of each school year; and

(2) Except on Saturdays, Sundays, and holidays, for at least 6 hours each day during the school year.

(b) *Adjustments in school year.* — (1) If a county board submits a written application to the State Board that describes a demonstrated effort by the county board to comply with subsection (a) of this section, the State Board may permit:

(i) Adjustments in the length of the school year;

(ii) Exceptions from the requirement that the school year be completed within a 10-month period;

(iii) Adjustments in the length of the school day; and

(iv) Schools to be open on holidays.

(2) These adjustments may be granted only if normal school attendance is prevented because of:

(i) Natural disaster;

(ii) Civil disaster; or

(iii) Severe weather conditions.

(3) Education funding from State or local sources may not be reduced if there are less than 180 school days in any year because of an approved application under this subsection.

(4) In case of emergency, the State Board may open schools on holidays.

(c) *Holidays.* — (1) The following days are public school holidays:

(i) Thanksgiving Day and the day after;

(ii) Christmas Eve and from then through January 1;

(iii) The Friday before Easter and from then through the Monday after Easter;

(iv) Memorial Day; and

(v) Primary and general election days.

(2) The public schools shall devote a part of the day to appropriate exercises for the following days:

(i) Washington's Birthday;

(ii) Lincoln's Birthday;

(iii) Veterans' Day;

(iv) Columbus Day;

(v) Martin Luther King Day;

(vi) Arbor Day; and

(vii) Any other day of national significance.

(3) In Worcester County, notwithstanding any other provision of this article, the public schools may not be used as polling places and may remain open and in session on primary and general election days.

(d) *School terms.* — The State Board shall divide the school year into the terms it considers appropriate. (An. Code 1957, art. 77, §§ 73-76; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, §§ 73 — except the first sentence — 74, 75, and 76.

The only changes are in style.

§ 7-304. Suspension and expulsion.

(a) *Suspension for not longer than 5 school days.* — (1) In accordance with the rules and regulations of the county board, each principal of a public school may suspend for cause, for not more than 5 school days, any student in the school who is under the direction of the principal.

(2) The student or his parent or guardian promptly shall be given a conference with the principal and any other appropriate personnel during the suspension period.

(b) *Suspension for more than 5 school days and expulsion.* — At the request of a principal, a county superintendent may suspend a student for more than 5 school days or expel him.

(c) *Procedure for more than 5-day suspension or expulsion.* — (1) If a principal finds that a suspension of more than 5 school days or expulsion is warranted, he immediately shall report the matter in writing to the county superintendent.

(2) The county superintendent or his designated representative promptly shall make a thorough investigation of the matter.

(3) If after the investigation the county superintendent finds that a longer suspension or expulsion is warranted, he or his designated representative promptly shall arrange a conference with the student and his parent or guardian.

(4) If after the conference the county superintendent or his designated representative finds that a suspension of more than 10 school days or expulsion is warranted, the student or his parent or guardian may:

(i) Appeal to the county board within 10 days after the determination;

(ii) Be heard before the county board or its designated committee; and

(iii) Bring counsel and witnesses to the hearing.

(5) Unless a public hearing is requested by the parent or guardian of the student, a hearing shall be held out of the presence of all individuals except those whose presence is considered necessary or desirable by the board.

(6) The appeal to the county board does not stay the decision of the county superintendent.

(7) The decision of the county board is final. (An. Code 1957, art. 77, § 95; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 95.

In subsection (a) of this section, the reference to the "Board of School Commissioners of Baltimore City" has been deleted as unnecessary in light of the defintion of "county board" in § 1-101 of this article.

The only other changes are in style.

§ 7-305. Corporal punishment in certain counties.

(a) *Corporal punishment may not be prohibited.* — Notwithstanding any bylaw, rule, or regulation made or approved by the State Board, the use of corporal punishment by a principal or vice-principal in the public schools of the following counties may not be prohibited:

(1) Allegany;

(c) *Legal counsel; indemnity.* — In any suit, claim, or criminal charge brought by a parent or other claimant of one of the combatants against the principal, teacher, or school security guard because of the intervention, the county board:

(1) Shall provide legal counsel for the principal, teacher, or school security guard, or may provide reimbursement for the reasonable expenses of the legal defense of any criminal charge if the county board considers it appropriate; and

(2) Shall save the principal, teacher, or school security guard harmless from any award or decree against him. (An. Code 1957, art. 77, § 98A; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 98A.

In this section, the references to the "Baltimore City Board of School Commissioners" have been deleted as unnecessary in light of the definition of "county board" in § 1-101 of this article.

The only other changes are in style.

§ 7-307. Searches of students and schools.

(a) *Authority to search student.* — (1) A principal, assistant principal, or school security guard of a public school may make a reasonable search of a student on the school premises if he has probable cause to believe that the student has in his possession an item, the possession of which is a criminal offense under the laws of this State.

(2) The search shall be made in the presence of a third party.

(b) *Authority to search school.* — (1) A principal, assistant principal, or school security guard of a public school may make a search of the physical plant of the school and its appurtenances including the lockers of students.

(2) The right of the school official to search the locker shall be announced or published previously in the school.

(c) *Rules and regulations.* — The Department shall adopt rules and regulations relating to the searches permitted under this section. (An. Code 1957, art. 77, § 96A; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 96A.

The only changes are in style.

Subtitle 4. Health and Safety of Students.

§ 7-401. School health program.

(a) *Duty of county board.* — With the assistance of the county health department, each county board shall provide:

(1) Adequate school health services;

(2) Instruction in health education; and

(3) A healthful school environment.

(b) *Development of public standards and guidelines.* — The Department of Education and the Department of Health and Mental Hygiene jointly shall:

(1) Develop public standards and guidelines for school health programs; and

(2) Offer assistance to the county boards and county health departments in their implementation. (An. Code 1957, art. 77, § 85; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 85.
The only changes are in style.

§ 7-402. Immunizations.

(a) *Rules and regulations.* — (1) In cooperation with the State Board and the Medical and Chirurgical Faculty of Maryland, the Department of Health and Mental Hygiene shall adopt rules and regulations regarding the immunizations required of children entering schools.

(2) These rules and regulations shall:

(i) Be adopted in compliance with the Administrative Procedure Act; and

(ii) Provide that any child may have the immunization administered by his personal physician.

(b) *Exception.* — Unless the Secretary of Health and Mental Hygiene declares an emergency or an epidemic of disease, a child whose parent or guardian objects in writing to immunization on the ground that it conflicts with the tenets and practice of a recognized church or religious denomination of which he is an adherent or member may not be required to present a physician's certification of immunization to be admitted to school. (An. Code 1957, art. 77, § 84; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 84.
The only changes are in style.

§ 7-403. Hearing and vision screening tests.

(a) *County boards or health departments to provide tests.* — (1) Each county board or county health department shall provide hearing and vision screening tests for all students in the public schools.

(2) Each county health department shall provide and fund hearing and vision tests for all students:

(i) In any private school that has received a certificate of approval under § 2-206 of this article; and

(ii) In any nonpublic educational facility in this State approved as a special education facility by the Department.

(b) *When administered.* — (1) Unless evidence is presented that a student has been tested within the past year, the tests required under subsection (a) of this section shall be given in the year a student enters a school system and when he enters the ninth grade.

(2) Further testing shall be done in accordance with the bylaws adopted by the State Board.

(c) *Records.* — The results of the hearing and vision tests required by this section shall be:

(1) Made a part of the permanent record file of each student; and

(2) Given to the parents of any student who fails the tests.

(d) *Adoption of standards, rules, and regulations.* — In cooperation with the Department of Health and Mental Hygiene, the Department of Education shall adopt standards, rules, and regulations to carry out the provisions of this section.

(e) *Students excepted.* — A student whose parent or guardian objects in writing to hearing and vision testing on the ground that it conflicts with the tenets and practice of a recognized church or religious denomination of which he is an adherent or member may not be required to take these tests. (An. Code 1957, art. 77, § 85B; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 85B.

In subsection (a) (2) (i) of this section, the reference to Article 77, § 12 has been changed to § 2-206 of this article which formerly appeared as Article 77, § 11. This change was made as Article 77, § 12 has been repealed and certification is now covered by § 2-206.

The only other changes are in style.

§ 7-404. School employees to be free from communicable tuberculosis.

(a) *Employees with communicable tuberculosis prohibited from working in schools.* — An individual who has tuberculosis in a communicable stage may not work in any capacity in a public, private, or parochial school.

(b) *Certification and tests.* — (1) When he is first employed and at intervals set by the local health officer, each employee shall furnish certification to the school administration that he is free of tuberculosis in a communicable stage.

(2) This certification shall be based on results of specific tests.

(3) The types of tests and the intervals between these tests shall:

(i) Be regulated by the local health officer; and

(ii) Conform to the standards of the Department of Health and Mental Hygiene. (An. Code 1957, art. 77, § 86; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 86.

The only changes are in style.

§ 8-310. Penalties.

(a) *Penalty for violation of § 8-302.* — Any person who has a deaf or blind child under his control and who violates any provision of § 8-302 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $5 for each offense.

(b) *Penalty for unlawfully inducing deaf or blind child to absent himself from school.* — Any person who induces or attempts to induce a deaf or blind child to absent himself unlawfully from school, or who employs or harbors a deaf or blind child who is absent unlawfully from school, while the school is in session, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $50 for each offense.

(c) *State's attorney to enforce section.* — (1) Before a State's attorney enforces this section, he shall have the child examined by two physicians to determine whether the child is unable to progress satisfactorily on account of his hearing or sight impairment or from some other cause.

(2) One of the physicians shall be an appropriate specialist.

(3) If the examination by the physicians indicates that the failure to progress satisfactorily in school is due to a hearing or sight impairment, the State's attorney shall enforce the provisions of this section.

(4) These medical examinations shall be paid for by the county in which the child who is examined resides. (An. Code 1957, art. 77, §§ 105, 106; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, §§ 105 and 106.

In this section, the references to "Baltimore City" and the "Mayor and City Council of Baltimore City" have been deleted in light of the definition of "county" in § 1-101 of this article.

The only other changes are in style.

Subtitle 4. Handicapped Children.

§ 8-401. "Special educational services" defined; domicile of child.

(a) *"Special educational services" defined.* — In this subtitle, "special educational services" means the educational services necessary to assure that all children with handicaps that impede their ability to learn are given the opportunity to reach appropriate levels of knowledge and learning skills consistent with their potential and includes the full range of these services, including special equipment, therapeutic treatments ancillary to education, and transportation, whether provided as part of or in addition to regular classroom placement or in separate public or private classes or facilities.

(b) *Domicile of child.* — In this subtitle, the domicile of a school ~~age~~ child is the county in which the parent or guardian who has legal custody of the child is domiciled. (An. Code 1957, art. 77, § 106D; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as the first part of the fourth sentence of Article 77, § 106D (a) and as Article 77, § 106D (b).

The only changes are in style.

University of Baltimore Law Review. — For note on procedural guidelines for implementing the right to free public education for handicapped children in Maryland, see 4 U. Balt. L. Rev. 136 (1974).

§ 8-402. State and counties to provide free educational programs for handicapped children.

(a) *Duties of State and counties.* — The State and each county shall make free educational programs available to each handicapped child, including a child who is severely handicapped, as provided by this subtitle.

(b) *Services to begin as soon as child can benefit.* — Appropriate special educational services are to begin as soon as a child can benefit from them, whether or not he is of regular school age. (An. Code 1957, art. 77, § 106D; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as the first sentence and the last part of the fourth sentence of Article 77, § 106D (a).

The only changes are in style.

University of Baltimore Law Review. — For note on procedural guidelines for implementing the right to free public education for handicapped children in Maryland, see 4 U. Balt. L. Rev. 136 (1974).

§ 8-403. State Board to adopt standards for education of handicapped children.

(a) *Adoption of bylaws.* — The State Board shall adopt, as bylaws, standards for the identification, diagnosis, examination, and education of each child in this State who is under the age of 21 and is found to need special educational services, whether or not the child is receiving nonduplicative services from another governmental agency.

(b) *Consultation before adoption.* — Before these standards are adopted, the State Board shall consult with public and private agencies and persons who are concerned with and knowledgeable about the problems of children who need special educational services.

(c) *Standards are to be as high as those for county programs.* — The standards for the education of handicapped children who are enrolled in programs that are operated by an agency other than a county board may not be lower than the

standards for the education of children who are enrolled in programs that are operated by a county board.

(d) *Contents of standards.* — The standards shall include:

(1) The required qualifications for teachers, administrators, and other professional, paraprofessional, and nonprofessional personnel;

(2) Procedures for identifying, testing, and diagnosing children who need special educational services;

(3) Guidelines for curricula, instructional materials, equipment, and the organization, administration, and supervision of the program, including accounting, auditing, and reporting procedures;

(4) Provisions for local, regional, and State day and residential centers for children who cannot be served reasonably in the regular public schools;

(5) Coordination of these special educational services with services given by any other government agency; and

(6) Guidelines for approval of placement in nonpublic schools or facilities if suitable public programs are not available. (An. Code 1957, art. 77, § 106D; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as the second, third, fifth, and sixth sentences of Article 77, § 106D (a).

The only changes are in style.

University of Baltimore Law Review. — For note on procedural guidelines for implementing the right to free public education for handicapped children in Maryland, see 4 U. Balt. L. Rev. 136 (1974).

§ 8-404. County boards to develop plans for special educational services.

(a) *Development of plans.* — After the State Board adopts standards under § 8-403 of this subtitle, each county board promptly shall develop a plan to provide special educational services in accordance with these standards.

(b) *Plan to provide for education of all handicapped children.* — Each plan shall provide for the education of all handicapped children, including those who are severely handicapped, whose parents or guardians are domiciled in the county.

(c) *Consultation.* — Before adopting a local plan, the county board shall consult with public and private agencies and persons who are concerned with and knowledgeable about the problems of children who need special educational services.

(d) *Plan may exceed State standards.* — A county board may adopt a plan that exceeds State standards.

(e) *Department to assist county boards.* — The Department shall provide reasonable assistance to each county board in the development of its plan.

(f) *Plan to provide for implementation within 6 years.* — Each county plan shall provide for full implementation of programs within 6 years on an annual phase-in basis.

(g) *Submission to State Superintendent.* — Each county board shall submit its plan to the State Superintendent within 9 months after adoption of the standards by the State Board and implementation shall begin with the school year after the plan is submitted. (An. Code 1957, art. 77, § 106D; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 106D (b).

In this section, the definitions of "local board of education" and "county" have been deleted as unnecessary in light of the definitions of "county board" and "county" in § 1-101 of this article.

The only other changes are in style.

University of Baltimore Law Review. — For note on procedural guidelines for implementing the right to free public education for handicapped children in Maryland, see 4 U. Balt. L. Rev. 136 (1974).

§ 8-405. Approval of county plans.

(a) *Duty to review plan; recommending approval.* — The State Superintendent shall review each county plan and, if he finds that it meets the standards adopted by the State Board and the requirements of this subtitle, he shall recommend that the plan be approved by the State Board.

(b) *Disapproval of plan.* — If the State Superintendent finds that the plan does not meet the standards of the State Board or the requirements of this subtitle, he shall return it to the county board with his written statement of why the plan does not meet these standards and requirements.

(c) *State Superintendent to act within 60 days.* — The State Superintendent shall act on the plan within 60 days after he receives it.

(d) *State Superintendent to develop plan 60 days after disapproval.* — (1) If, after 60 days from the return of the disapproved plan by the State Superintendent, the county board does not submit a plan that in the judgment of the State Superintendent meets the standards of the State Board and the requirements of this subtitle, the State Superintendent shall develop a plan for the county.

(2) Before the State Board approves this plan, the county shall be given an opportunity to review the plan with the State Board. (An. Code 1957, art. 77, § 106D; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 106D (c).

The only changes are in style.

University of Baltimore Law Review. — For note on procedural guidelines for implementing the right to free public education for handicapped children in Maryland, see 4 U. Balt. L. Rev. 136 (1974).

§ 8-406. Plan for children in State institutions.

(a) *State Superintendent to develop plan.* — After the standards required in § 8-403 of this subtitle are adopted, the State Superintendent shall develop a plan to provide special educational services for children under the age of 21 who are in State institutions.

(b) *Plan to conform to standards.* — The plan shall meet these State standards.

(c) *State Board to approve plan.* — The State Board shall review and approve or disapprove, as appropriate, the plan. (An. Code 1957, art. 77, § 106D; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 106D (d).
The only changes are in style.

University of Baltimore Law Review. — For note on procedural guidelines for implementing the right to free public education for handicapped children in Maryland, see 4 U. Balt. L. Rev. 136 (1974).

§ 8-407. Implementation of approved plan.

Each county board shall implement the plan adopted for special educational services for its county as approved by the State Board or developed by the State Superintendent. (An. Code 1957, art. 77, § 106D; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 106D (e).
The only changes are in style.

University of Baltimore Law Review. — For note on procedural guidelines for implementing the right to free public education for handicapped children in Maryland, see 4 U. Balt. L. Rev. 136 (1974).

§ 8-408. Review of and amendments to approved plans.

(a) *Review.* — The State Board shall review the approved plans for special educational services at least once each year.

(b) *Amendments.* — On the recommendation of the State Superintendent and with the approval of the State Board, a county board may amend an approved plan. (An. Code 1957, art. 77, § 106D; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 106D (f).
The only changes are in style.

University of Baltimore Law Review. — For note on procedural guidelines for implementing the right to free public education for handicapped children in Maryland, see 4 U. Balt. L. Rev. 136 (1974).

§ 8-409. Placement of handicapped children in nonpublic educational program.

(a) *Basis for placement.* — A child who needs special educational services that are not provided in a public county, regional, or State program shall be placed in an appropriate nonpublic educational program that offers these services.

(b) *Payment of cost.* — The cost of the nonpublic educational program shall be paid by the State and the county in which the child is domiciled in accordance with § 8-417.2 (d) or § 8-417.3 (d) of this subtitle, as appropriate.

(c) *Approval of Department necessary for payment.* — (1) Payment or reimbursement for a nonpublic program may not be provided unless the Department approves:

(i) The nonpublic program;

(ii) The placement of the child in the program;

(iii) The cost of the program; and

(iv) The amount of payment or reimbursement.

(2) The State Board shall adopt bylaws that establish standards and guidelines for these approvals.

(d) *Court placement.* — (1) Except for a placement that results from an appeal from a decision of the Department taken under the Administrative Procedure Act, a child may not be placed in a nonpublic educational program at public expense by any court unless the placement is in accordance with this section.

(2) The Department shall be notified of each case in which the placement of a child in a nonpublic educational program at public expense is sought or is under consideration by a court.

(3) The Department shall be made a party to the proceeding. (An. Code 1957, art. 77, § 106D; 1978, ch. 22, § 2.)

§ 8-413. Education and training of handicapped children under the age of 6.

(a) *"Handicapped child" defined.* — (1) In this section "handicapped child" means a child under the age of 6 with a physical, mental, or emotional impairment that, in the judgment of the Department, makes a special educational and training program necessary or desirable to help the child reach a scholastic achievement as near normal as feasible.

(2) "Handicapped child" includes a child who suffers from mild, moderate, severe, or profound hearing loss.

(b) *Funding and expenditures.* — (1) Each year the Governor shall place an item in the State budget for the education and training of handicapped children who are under the age of 6.

(2) The appropriation by the General Assembly shall be spent under the supervision and control of the Department.

(c) *Standards, rules, and regulations.* — The Department shall adopt standards and issue rules and regulations based on these standards for:

(1) Nonmedical examination, classification, and education of handicapped children;

(2) Qualifications of teachers;

(3) Curriculum and equipment; and

(4) General supervision and operation of the program provided in this section. (An. Code 1957, art. 77, § 102; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 102.

The only changes are in style.

§ 8-414. Parent surrogates.

(a) *Definitions.* — (1) In this section the following words have the meanings indicated.

(2) *"Child"* means an individual under the age of 21.

(3) *"Educational decision making process"* includes identification, evaluation, and placement, as well as the hearing, mediation, and appeal procedures provided for in the bylaws of the State Board.

(4) *"Parent surrogate"* means a person who is appointed by the State Board on the recommendation of a county superintendent or his designee as an advocate of a child in the educational decision making process in place of the natural parent or legal guardian of the child.

(5) *"Unavailable"* includes committed to a mental institution, incarcerated in a penal institution, otherwise unable to act as an advocate of a child in the educational decision making process, or not present after good faith efforts to obtain presence.

(6) *"Unknown"* means not known and not ascertainable by reasonable diligence or after reasonable inquiry.

(b) *Who may request assignment of parent surrogate.* – Any person may request that a parent surrogate be assigned for a child who may need special education if:

(1) The child is a ward of the State; or

(2) The parent or guardian of the child is unknown or unavailable.

(c) *County superintendent required to request assignment.* — (1) If a county superintendent or his designee finds that a child may need special education and the child is a ward of the State or the parent or guardian of the child is unknown or unavailable, the county superintendent or his designee shall make a written request that the State Board appoint a parent surrogate to represent the child in the educational decision making process.

(2) The request to the State Board shall include:

(i) The name, date of birth, sex, domicile, and residence of the child;

(ii) A statement explaining why the child meets the requirements for the appointment of a parent surrogate;

(iii) Documentation of efforts made to locate the parent or guardian if unknown or the location of the parent or guardian if unavailable; and

(iv) The name and qualifications of a proposed parent surrogate who is considered appropriate to represent the child in the educational decision making process.

(d) *Appointment by State Board.* — (1) If a county board files a request for the appointment of a parent surrogate, the State Board shall appoint a parent surrogate if it finds that:

(i) The parent or guardian is unknown or unavailable;

(ii) The proposed parent surrogate is neither an employee nor an agent of the State Board or the county board that is involved in the education of the child; and

(iii) The parent surrogate is otherwise properly qualified to be an advocate for the child.

(2) If the State Board finds that the proposed parent surrogate is not qualified to serve, the State Board may:

(i) Ask the county board to make another nomination; or

(ii) Choose and appoint a parent surrogate.

(3) The State Board shall make a final selection or rejection within 10 days after it receives a request from the county board.

(4) The county board shall bear the costs for selection and appointment.

(e) *Rules and regulations.* — The State Board shall adopt rules and regulations in accordance with the Administrative Procedure Act on the qualifications, selection, appointment, training, compensation, removal, and replacement necessary to implement this section.

(f) *Court review of State Board decision.* — Any person who is aggrieved by a decision of the State Board on the selection and appointment of a parent surrogate may seek review of the decision in a court of competent jurisdiction. (An. Code 1957, art. 77, § 106D-1; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 106D-1.

Article 77, § 106D-1 (a) (2) and (3) has been deleted in light of the definitions of "county board" and "State board" in § 1-101 of this article.

The only other changes are in style.

The Administrative Procedure Act appears as Article 41, §§ 244 through 256 of the Code.

§ 8-415. Review of placement decision of a handicapped child.

(a) *Review at county level.* — (1) If a county board makes a placement decision for a handicapped child, the parent or guardian of the handicapped child may make a written request to the county board for a review of the placement decision.

(2) Within 60 days after it receives a request for review, the county board shall appoint a hearing officer or a hearing board that consists of individuals who are knowledgeable in the fields and areas significant to the educational review of the handicapped child, to hear the case and make a decision.

(3) An individual may not serve as the hearing officer or a board member if he:

(i) Is an employee of the county board that is responsible for the education or care of the handicapped child; or

(ii) Has an interest that would conflict with his objectivity in the hearing.

(4) Within this same 60-day period, the hearing officer or the hearing board shall review the placement and make a decision.

(b) *Review at State level.* — (1) After exhausting all locally available administrative remedies and procedures, a parent or guardian of a handicapped child or the county board that is responsible for providing special educational services for the child, with good cause, may make a written request to the State Board for a review of:

(i) Diagnosis;

(ii) Evaluation of educational programs provided for the child by the county board; or

(iii) The exclusion or exemption of the child from school privileges by the county board.

(2) Within 60 days after it receives a request for review, the State Board shall appoint a hearing board of at least three individuals who are knowledgeable in the fields and areas significant to the educational review of the child.

(3) An individual may not serve as a hearing board member if he:

(i) Is an employee of the State Board or of the county board that is responsible for the education or care of the child; or

(ii) Has an interest that would conflict with his objectivity in the hearing.

(c) *Authority and duties of State hearing board.* — (1) The State hearing board may:

(i) After review of the educational records of the child, dismiss any request for review that it considers to be without good cause;

(ii) Hear any testimony that it considers relevant;

(iii) Require a complete and independent diagnosis, evaluation, and prescription of educational programs by qualified persons, the cost of which shall be paid by the State Board; and

(iv) Subject to § 8-409 of this subtitle, confirm, modify, or reject any diagnosis, evaluation, educational program, or exclusion or exemption of the child from school privileges and require alternate special educational programs for the child.

(2) The hearing board shall make its decision within 60 days after the State Board receives the request for review.

(3) Each board member is entitled to a reasonable fee and expenses as established by the State Board.

(d) *Waiver of 60-day time limits.* — The 60-day time limits imposed by subsections (a) and (c) of this section for a decision on a request for review shall be extended or waived on written request to the reviewing authority by the parent or guardian who requested the review.

(e) *Circuit court to act if State Board fails to meet 60-day requirement.* — If a decision is not made on a request for review within 60 days after it is received by the State Board under subsection (b) of this section, the circuit court for the county in which the child resides or, if he resides in Baltimore City, the Baltimore City Court, on petition shall hear and made a decision on the request for review as soon as practicable after receiving the record of the case.

(f) *Appeal.* — An appeal from the decision of the State hearing board under subsection (c) of this section shall be to the circuit court for the county in which the handicapped child resides or, if he resides in Baltimore City, to the Baltimore City Court.

(g) *Review to be conducted under this section; exceptions.* — Except for a review by a circuit court or by the Baltimore City Court, any review requested by a parent or guardian of a handicapped child shall be conducted in conformity with this section and any applicable federal law. (An. Code 1957, art. 77, § 100A; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 100A.

In subsections (e), (f), and (g) of this section, new language has been added to indicate properly the "Baltimore City Court" as the counterpart in Baltimore City to a circuit court for appellate purposes.

Article 77, § 100A (a) has been deleted as unnecessary in light of the definition of "county board" in § 1-101 of this article.

The only other changes are in style.

The second sentence of Article 77, § 100A (i) (3) has been deleted as unnecessary.

University of Baltimore Law Review. — For note on procedural guidelines for implementing the right to free public education for handicapped children in Maryland, see 4 U. Balt. L. Rev. 136 (1974).

§ 8-416. Funding level beginning in fiscal year 1982.

Beginning in fiscal year 1982, the funding level provided by this State and its counties for educational programs for handicapped children under §§ 8-417 through 8-417.6 of this subtitle may not be less than the funding level for these programs in fiscal year 1981. (1978, ch. 22, § 2.)

REVISOR'S NOTE

This section is new language derived from § 4 of ch. 240, Acts of 1976.

§ 8-417. Purpose.

The purpose of §§ 8-417.1 through 8-417.6 of this subtitle is to provide a formula for funding the programs required under §§ 8-401 through 8-409 of this subtitle and to fix the obligation of this State and each county for this funding through fiscal year 1981. (An. Code 1957, art. 77, § 106G-1; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 106G-1.
The only changes are in style.

§ 8-417.1. Definitions.

(a) *In general.* — In §§ 8-417.1 through 8-417.6 of this subtitle, the following words have the meanings indicated.

(b) *Basic cost.* — (1) "Basic cost," as to each county, means the average amount spent by the county from county, State, and federal sources for the public education of a nonhandicapped child.

(2) "Basic cost" does not include amounts specifically allocated and spent for identifiable compensatory programs for disadvantaged children.

(c) *County board.* — "County board," if appropriate, includes the Mayor and City Council of Baltimore City.

(d) *Excess cost.* — (1) "Excess cost" means the cost of providing special educational services under §§ 8-401 through 8-409 of this subtitle in excess of the basic cost.

(2) "Excess cost" does not include:

(i) Federal funds received or receivable by the State or the counties under any federal program that is specifically designed to assist in the financing of special educational programs or services; and

(ii) The cost of placing children in nonpublic educational programs as provided in § 8-409 of this subtitle.

(e) *Students enrolled.* — (1) "Students enrolled" means all students who are enrolled in grades kindergarten through 12 or their equivalent in regular day school programs.

(2) "Students enrolled" in Baltimore county includes the students in the Lida Lee Tall School of Towson State University.

(f) *Wealth.* — "Wealth," as to each county, means the respective wealth used in the annual calculation of the State share of basic current expenses as determined under § 5-202 of this article. (An. Code 1957, art. 77, § 106G-2; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 106G-2.

The definition of "county" in Article 77, § 106G-2 (c) has been deleted in light of the definition of "county" in § 1-101 of this article.

In subsection (e) of this section, the word "students" has been substituted for "pupils" for uniformity.

The only other changes are in style.

§ 8-417.2. Funding for special educational services—Fiscal years 1979 and 1980.

(a) *Special educational services funded under this section.* — The special educational services required under §§ 8-401 through 8-409 of this subtitle for fiscal years 1979 and 1980 shall be funded in accordance with this section.

(b) *County to fund basic cost.* — Each county shall contribute the basic cost for each child domiciled in the county who, during the fiscal year, receives special educational services, whether in a public or nonpublic program.

(c) *Funding of excess cost.* — (1) As used in this subsection, the 1976 county base and State base for each county is as follows:

County	*County Base*	*State Base*
Allegany	$ 167,491	$ 321,299
Anne Arundel	3,533,277	2,185,398
Baltimore City	5,079,077	14,383,031
Baltimore County	2,216,573	3,954,572
Calvert	195,798	176,613
Caroline	72,505	161,514
Carroll	55,049	810,288
Cecil	183,323	438,212
Charles	629,858	686,049
Dorchester	70,012	300,442
Frederick	410,737	531,466
Garrett	218,074	168,760
Harford	392,953	1,107,628
Howard	696,611	1,465,793
Kent	82,470	281,695
Montgomery	5,243,049	6,701,725
Prince George's	6,647,499	7,171,404
Queen Anne's	128,101	176,053
St. Mary's	719,997	388,379
Somerset	62,089	69,821

County	*County Base*	*State Base*
Talbot	$ 141,709	$ 226,408
Washington	335,927	695,884
Wicomico	250,790	485,350
Worcester	133,137	192,002

(2) The State and each county shall contribute to the public funding of the excess cost in accordance with this subsection.

(3) For fiscal year 1979:

(i) The county contribution shall be an amount equal to its 1976 county base, as set forth in this subsection, plus or minus, as the case may be, 60 percent of the difference between that county base and the final required local contribution calculated in accordance with § 8-417.3 (c) (6) of this subtitle; if the final required local contribution is higher than the 1976 county base, the percentage of the difference shall be added to the county base; otherwise, it shall be subtracted; and

(ii) The State contribution for each county shall be an amount equal to the 1976 State base for the county, as set forth in paragraph (1) of this subsection, plus 60 percent of the difference between that base and the final required State contribution calculated in accordance with § 8-417.3 (c) (7) of this subtitle.

(4) For fiscal year 1980:

(i) The county contribution shall be an amount equal to its 1976 county base, as set forth in paragraph (1) of this subsection, plus or minus, as the case may be, 80 percent of the difference between that county base and the final required local contribution calculated in accordance with § 8-417.3 (c) (6) of this subtitle; if the final required local contribution is higher than the 1976 county base, the percentage of the difference shall be added to the county base; otherwise, it shall be subtracted; and

(ii) The State contribution for each county shall be an amount equal to the 1976 State base for the county, as set forth in paragraph (1) of this subsection, plus 80 percent of the difference between that base and the final required State contribution calculated in accordance with § 8-417.3 (c) (7) of this subtitle.

(d) *Funding of special education in nonpublic programs.* — The State and the counties shall share collectively in the cost of educating handicapped children in nonpublic programs under § 8-409 of this subtitle on the following basis:

(1) Each county first shall contribute the amounts provided for in § 8-417.3 (d) (1) of this subtitle for each of these children domiciled in the county; and

(2) For each of these children, the State shall contribute for fiscal years 1979 through 1981, an amount equal to the full amount required under § 8-417.3 (d) (2) of this subtitle. (An. Code 1957, art. 77, § 106G-4; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 106G-4.

Article 77, § 106G-4 (c) (2) and (3), which related to fiscal years 1977 and 1978, has been deleted as obsolete.

Article 77, § 106G-4 (d) (2) (i), which related to fiscal year 1977, has been deleted as obsolete. The only other changes are in style.

§ 8-417.3. Same — Fiscal year 1981.

(a) *Special educational services funded under this section.* — The special educational services required under §§ 8-401 through 8-409 of this subtitle for fiscal year 1981 shall be funded in accordance with this section.

(b) *County to fund basic cost.* — Each county shall contribute the basic cost for each child domiciled in the county who, during the fiscal year, receives special educational services, whether in a public or nonpublic program.

(c) *Funding of excess cost.* — The State and each county shall share collectively in a contribution of $100,000,000 as the public funding of the excess cost in accordance with the following formula:

(1) First: The sum of $100,000,000 shall be divided by the aggregate number of students enrolled in all of the counties as of September 30 of the previous school year, and the quotient shall be expressed as a dollar figure rounded to the third decimal place;

(2) Second: The number of students enrolled as of September 30 of the previous school year, in each county, shall be multiplied by the quotient determined under item (1) of this subsection; the product is the initial total excess cost program for the county;

(3) Third: The sum of $30,000,000 shall be divided by the aggregate wealth of all of the counties, and the resulting quotient shall be rounded to six decimal places and then expressed as a percentage; this percentage figure shall be known as the uniform percentage;

(4) Fourth: A calculation shall be made for each county by multiplying the wealth of the county by the uniform percentage; the product is the initial required local contribution of the county to the excess cost program; this initial required local contribution shall be subtracted, for each county, from the initial total excess cost program for the county, determined under item (2) of this subsection, and the remainder is the initial required State contribution to the county for the program;

(5) Fifth: The initial required local contribution and the initial required State contribution to the excess cost program for each county, as determined under item (4) of this subsection, shall be multiplied by an index calculated for that county as follows:

(i) The fiscal year 1976 excess cost of special education shall be determined for each county by adding the 1976 county base and State base, as set forth in § 8-417.2 (c) (1) of this subtitle;

(ii) For each county, this fiscal year 1976 excess cost of special education shall be divided by the number of students enrolled in the county as of September 30, 1975; the quotient is the county's per student excess cost of special education for fiscal year 1976;

(iii) These county per student excess cost figures shall then be ranked in order from the highest to the lowest;

(iv) A median per student excess cost then shall be determined by adding together the figures for the twelfth ranked county and the thirteenth ranked county and dividing the sum by two;

(v) The median per student excess cost shall be given an index number of 1.000;

(vi) Each county that has a fiscal year 1976 per student excess cost of special education equal to or less than the median also shall be given an index number of 1.000;

(vii) Each county that has a fiscal year 1976 per student excess cost of special education greater than the median shall be given an index number calculated by dividing its per student excess cost by the median per student excess cost and rounding the quotient to three decimal places;

(viii) The appropriate indexes by county are as follows:

County	*Index*
Allegany	1.000
Anne Arundel	1.276
Baltimore City	2.061
Baltimore County	1.000
Calvert	1.000
Caroline	1.000
Carroll	1.000
Cecil	1.000
Charles	1.347
Dorchester	1.050
Frederick	1.000
Garrett	1.162
Harford	1.000
Howard	1.564
Kent	1.757
Montgomery	1.708
Prince George's	1.618
Queen Anne's	1.111
St. Mary's	1.617
Somerset	1.000
Talbot	1.876
Washington	1.000
Wicomico	1.000
Worcester	1.000;

(ix) These products shall be known, respectively, as the weighted local and State required contributions to the excess cost program;

(6) Sixth: The sum of $30,000,000 shall be divided by the aggregate weighted local required contributions, and the quotient shall be rounded to four decimal places; the weighted local required contribution for each county shall then be multiplied by this quotient, and the product shall be the final required local contribution to the excess cost program; and

(7) Seventh: The sum of $70,000,000 shall be divided by the aggregate weighted State required contribution, and the quotient shall be rounded to four decimal places; the weighted State required contribution for each county shall then be multiplied by this quotient, and the product shall be the final required State contribution to the excess cost program for each county.

(d) *Funding of special education in nonpublic programs.* — The State and the counties shall share collectively in the cost of educating handicapped children in nonpublic programs under § 8-409 of this subtitle on the following basis:

(1) For each of these children domiciled in the county, the county shall contribute the local share of the basic cost, as required under subsection (b) of this section, plus an additional amount equal to 200 percent of the basic cost, but not more than the amount of cost or reimbursement approved by the Department; this contribution shall be made from the fund established by the State and local contributions to the excess cost program under subsection (c) of this section; and

(2) For each of these children, the State shall contribute an amount equal to the approved amount of cost or reimbursement less the amount the county must contribute under item (1) of this subsection. (An. Code 1957, art. 77, § 106G-3; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 106G-3.
The only changes are in style.

§ 8-417.4. Appropriations; federal funds; additional funds.

(a) *County appropriations and tax levies.* — Each county governing body shall:

(1) Appropriate the amounts required as the county contribution under §§ 8-417.2 and 8-417.3 of this subtitle; and

(2) Levy an annual tax sufficient to provide the revenue necessary to fund the appropriation.

(b) *State share to be included in State budget.* — Under the provisions of Article III, § 52 (4) and (6) of the State constitution, an appropriation necessary to fund the State contributions required under §§ 8-417.2 and 8-417.3 of this subtitle shall be included in the annual State budget.

(c) *Federal funds.* — The calculations provided for in §§ 8-417.2 and 8-417.3 of this subtitle may not include federal funds received by the State or a county for special educational services and programs. These federal funds are in addition to, and not part of, the required State and county contributions, and these funds shall be used or distributed to the counties in accordance with the applicable federal law.

(d) *Contributions above those required.* — Sections 8-417 through 8-417.6 of this subtitle do not prevent this State or a county from contributing more than the required amounts to special educational programs in accordance with normal budgetary procedures. (An. Code 1957, art. 77, § 106G-5; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 106G-5.
The only changes are in style.

§ 8-417.5. Review and modification of funding formula.

(a) *Review and report by State Board.* — Each year, the State Board shall:

(1) Review the application of the funding formula provided in §§ 8-417 through 8-417.6 of this subtitle in light of the programs required under §§ 8-401 through 8-409 of this subtitle; and

(2) On or before September 30, make a report to the Governor and the General Assembly.

(b) *Contents of report.* — This annual report shall include:

(1) The actual cost and number of nonpublic placements by each county;

(2) The amount of excess cost spent by each county from:

(i) Federal funds;

(ii) State funds; and

(iii) Local funds;

(3) The incidence rate of handicapped children and the percentage being served by each county; and

(4) An analysis of the funding program provided for in §§ 8-417 through 8-417.6 of this subtitle as to its cost and effectiveness in providing special educational services to the handicapped children in this State.

(c) *Modifications of formula.* — If the State Board finds that because of new information or changed circumstances the formula has or will become inequitable or inadequate, it shall recommend appropriate changes in the formula. (An. Code 1957, art. 77, § 106G-6; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 106G-6.
The only changes are in style.

§ 8-417.6. Expiration.

Sections 8-417 through 8-417.6 of this subtitle shall expire and become void on July 1, 1981, without the necessity of further action by the General Assembly. (An. Code 1957, art. 77, § 106G-7; 1978, ch. 22, § 2.)

REVISOR'S NOTE

This section formerly appeared as Article 77, § 106G-7.
The only changes are in style.

GENERAL REVISOR'S NOTE

In revising this title, the Commission to Revise the Annotated Code deleted as obsolete or otherwise unnecessary the following related provisions in addition to those noted in the revisor's notes to §§ 8-415 and 8-417.2 of this title:

(1) Article 77, §§ 100 and 101. These provisions dealt with the superseded State program for the education of handicapped children. The provisions of §§ 8-416 through 8-417.6 of this title supplant this former program. Section 4 of ch. 240, Acts of 1976 specifically provides that Article 77, §§ 100 and 101 are superseded by the enactment of Article 77, § 106D.

(2) Article 77, § 100B. This section provided for the funding of the education of handicapped children "for the 1975-1976 fiscal year" and has been deleted as obsolete.

(3) Article 77, § 106G-8. This section provided for funding for nonpublic special educational services in fiscal year 1977 and has been deleted as obsolete.

FACILITIES FOR THE HANDICAPPED

§ 51. Facilities for the handicapped.

(a) *Title; plans and specifications for public buildings to provide facilities.* — This subtitle shall be known as the Facilities for the Handicapped Act. All plans and specifications for the erection of public buildings by the State or any political subdivision thereof, except those plans and specifications for buildings to be used by the penal institutions of the State or the political subdivision, shall provide facilities for the handicapped.

(b) *Definitions.* — In this subtitle, "public building" means a building structure or improved area owned or constructed for lease by this State or its political subdivisions.

"Handicapped person" means a person with a measurable limitation of mobility due to congenital defect, disease, or trauma.

"Facility for handicapped persons" includes any ramp, handrail, elevator, door, specially treated surface and similar design, convenience, or device which facilitates the health, safety, or comfort of a handicapped person.

(c) *Legislative declaration as to buildings which lack facilities.* — Public buildings which lack facilities for handicapped persons (1) create a substantial risk of death or injury with respect to handicapped persons and others in normal conditions and in the event of fire, panic, or other emergency; and (2) impair the full use and enjoyment of public buildings by handicapped persons for education, treatment, training, employment, or recreation.

(d) *Standards of minimum requirements for facilities; facilities not required in certain portions of buildings; building design regulated by subtitle after July 1, 1968.* — Not later than July 1, 1968, the Board of Public Works, through the Department of Public Improvements, shall publish the standards of minimum requirements for facilities for handicapped persons in public buildings; standards to conform to American Standards Association specification A 117.1-1961 as modified by the Department of Public Improvements in cooperation with Governor's Study Group on Vocational Rehabilitation. The standards shall not require facilities for the handicapped in portions of public buildings which are not open to or used by the general working force or by the general public. The design of public buildings by the State and by its political subdivisions shall be regulated by the provisions of this subtitle upon and after July 1, 1968.

(e) *Duty of contracting authority after January 1, 1969.* — By January 1, 1969, the appropriate contracting authority shall determine that the plans and specifications of every public building which the State or any political subdivision, governmental entity or public authority constructs conforms to this subtitle.

(f) *Filing standards with Secretary of State.* — The standards shall be filed with the Secretary of State.

(g) *Application of subtitle to improvement of certain areas; marking facilities; curbs and sidewalks.* — (1) The provisions of this subtitle shall apply to improvement of areas used for gathering or amusement such as public parks, recreation centers, and the like; particularly with regard to toilet facilities, ramps, building

entrances, drinking fountains, parking, and walks. Such facilities should be suitably marked by a symbol denoting "usable by the physically disabled."

(2) Curbs or sidewalks at the intersection of two or more streets or roads which are constructed or reconstructed by the State Highway Administration or any municipal corporation, political subdivision of this State, or private contractor for dedication to a municipal corporation or political subdivision shall conform to the following requirements:

(i) Ramps or curb cuts shall be constructed and graded onto the crosswalks of the intersection; and

(ii) The ramps or curb cuts shall be at least 40 inches wide and constructed to allow reasonable access to the crosswalk for physically handicapped persons.

(3) Ramps or curb cuts may not be required under subsection (2) if the State Highway Administration determines that:

(i) The establishment of ramps or curb cuts would be contrary to public safety;

(ii) The cost of establishing the ramps or curb cuts would be excessively disproportionate to the need or the probable use thereof; or

(iii) The sparsity of population, the existence of other available ways, or other factors demonstrate an absence of any need for the ramps or curb cuts.

(h) *Application of subtitle to educational facilities.* — The provisions of this subtitle shall apply to all educational facilities constructed with public funds or owned and/or operated by the State or its political subdivisions.

(i) *Application of subtitle to transportation accommodations.* — The provisions of this subtitle shall apply to public transportation accommodations supported by public funds (such as terminals and stations) which are engaged in mass transportation of persons.

(j) *Responsibility for enforcement of subtitle.* — The responsibility for enforcement of this subtitle is as follows:

(1) Where any State capital nonschool funds are utilized or where construction is upon state-owned land — the Department of Public Improvements;

(2) Where any State aid for school construction funds are utilized — the State Department of Education; and

(3) Where funds of counties or other political subdivisions are utilized (exclusive of State funds) — the governing bodies thereof. (1968, ch. 148; 1974, ch. 739.)

Effect of amendment. — The 1974 amendment designated the former provisions of subsection (g) as sub-subsection (1) and added sub-subsections (2) and (3).

ARTISTIC PROPERTY

§ 52. Commission on Artistic Property.

(a) *Appointment; part of Department of General Services; location, etc., of paintings and decorative arts.* — The Secretary of General Services, with the approval of the Governor, shall appoint three persons as a Commission on Artistic Property, to keep a continuing inventory of valuable paintings and other decorative arts in all State buildings and premises in the Annapolis area; said Commission to be part of the Department of General Services. The Commission also shall provide for the location, proper care, custody, restoration, display, and preservation of these paintings and other decorative arts.